

ORIGINAL

OPEN MEETING AGENDA ITEM
BEFORE THE ARIZONA CORPORATION



0000164631

COMMISSIONERS

Arizona Corporation Commission

SUSAN BITTER SMITH, Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

DOCKETED

AUG 27 2015

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AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF STAFF'S INQUIRY
INTO THE TERMINATION OF
STANDPIPE SERVICE BY JOHNSON
UTILITIES, L.L.C.

DOCKET WS-02987A-15-0284

**JOHNSON UTILITIES FILING OF
TARIFFS AND INFORMATION**

Johnson Utilities has a CC&N and a tariff. The tariff is attached as Exhibit 1. JU had a prior tariff which was superseded by Exhibit 1; it is attached as Exhibit 2.

Agenda item 5 for the August 27, 2015, Staff Meeting of the Commission calls for discussion and a possible vote on compelling Johnson Utilities to provide a service not required in its current tariff, a standpipe service. The Commission has no jurisdiction to enter such an order.

As an accommodation to the concerns expressed by Staff and the Commission (see August 18, 2015 Open Meeting), Johnson Utilities filed in this docket a proposed temporary order that will substantially solve the immediate problem (based on the very patchy information provided by Staff as to its definition of the "problem"). The temporary order filing set out a temporary standpipe service tariff which included the requirements that must be met by all water haulers. Additionally, any proposed new tariff must contain the normal and typical requirements for utility service such as a deposit, insurance (in the case of commercial haulers), proof that the water will be delivered within the Johnson Utilities CC&N, etc. Some of those requirements were not

1 mentioned in the proposed temporary tariff due to the need to file a proposal quickly and
2 the lack of a developed record. However, requirements must mirror those typically
3 contained in water company tariffs.

4 Johnson Utilities' position is also supported by all filings it has made in this
5 docket, which are hereby incorporated by this reference as if set out in full in this
6 document.
7

8 RESPECTFULLY SUBMITTED this 27th day of August, 2015.

9
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filed this 27th day of August, 2015, with:

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COPIES of the foregoing hand-delivered
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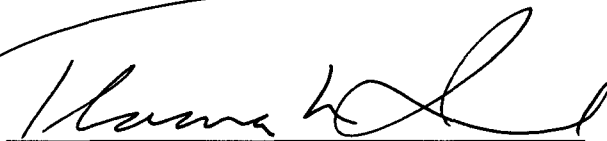


EXHIBIT 1



0000116169

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

Arizona Corporation Commission

DOCKETED

AUG 25 2010

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF
JOHNSON UTILITIES, L.L.C., DBA JOHNSON
UTILITIES COMPANY FOR AN INCREASE IN
ITS WATER AND WASTEWATER RATES FOR
CUSTOMERS WITHIN PINAL COUNTY,
ARIZONA.

DOCKET NO. WS-02987A-08-0180

DECISION NO. 71854

OPINION AND ORDER

DATES OF HEARING:

January 27, February 26 (Procedural Conferences);
April 20, (Pre-Hearing Conference); April 23, 24, 27
(Hearing); July 23 (Procedural Conference/Oral
Arguments); September 21, 24, 25, October 1, 2, 5, 6,
and 7, 2009 (Hearing).

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Teena Wolfe

APPEARANCES:

Mr. Jeffrey W. Crockett, Mr. Bradley S. Carroll and
Mr. Robert Metli, SNELL & WILMER, on behalf of
Johnson Utilities, LLC;

Mr. Craig A. Marks, CRAIG A. MARKS, PLC, on
behalf of Swing First Golf, LLC;

Ms. Jodi Jerich, Director, Mr. Daniel Pozefsky, Chief
Counsel and Ms. Michelle Wood, Staff Attorney, on
behalf of the Residential Utility Consumer Office;

Mr. James E. Mannato, Town Attorney, on behalf of
the Town of Florence; and

Ms. Nancy Scott, Ms. Ayesha Vohra, and Ms. Robin
Mitchell, Staff Attorneys, Legal Division, on behalf of
the Utilities Division of the Arizona Corporation
Commission.

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1 **BY THE COMMISSION:**

2 **I. INTRODUCTION**

3 On March 31, 2008, Johnson Utilities, LLC, dba Johnson Utilities Company ("Johnson,"
4 "Johnson Utilities," or "Company") filed with the Arizona Corporation Commission
5 ("Commission") a rate application for its water and wastewater utility services, using a test year
6 ended December 31, 2007.

7 Johnson is a water and wastewater provider serving portions of Pinal County, Arizona. The
8 Company served approximately 17,541 water customers and 21,525 wastewater customers during
9 the test year. This is the first rate case filed by Johnson since the grant of its original Certificate of
10 Convenience and Necessity ("CC&N") in Decision No. 60223 (May 27, 1997). Decision No. 60223
11 set initial rates for the Company's water and wastewater services and ordered the Company to file a
12 rate review 36 months from the date it first provided service to any customer. On October 25, 2005,
13 in Decision Nos. 68235, 68236, and 68237, Johnson was ordered to file a rate case by May 1, 2007,
14 using a 2006 test year. Prior to that date and on several occasions thereafter, the Company docketed
15 filings requesting an extension of the filing date.¹ No action was taken on the requests for an
16 extension of time. The Company filed the instant rate case on a date supported by the Commission's
17 Utilities Division ("Staff").²

18 On August 1, 2008, following Staff's issuance of two Letters of Deficiency and filings by
19 Johnson to address the items required to deem the application sufficient for processing, Staff filed a
20 Letter of Sufficiency informing the Company that the application had met the Commission's
21 sufficiency requirements and classifying the Company as a Class A utility.

22 On August 15, 2008, a Rate Case Procedural Order was issued setting a hearing on the rate
23 application to commence on April 23, 2009, and setting associated procedural deadlines, including
24 public notice requirements.

25 Intervention in this matter was granted to Swing First Golf, LLC ("Swing First"), the Town
26 of Florence ("Florence"), and the Residential Utility Consumer Office ("RUCO"). The hearing

27 ¹ See, e.g., December 6, 2007 Letter to Docket Control and accompanying attachments in Docket No. WS-02987A-04-
28 0288.

² See *id.*

1 commenced as scheduled on April 23, 2009 before a duly authorized Administrative Law Judge of
 2 the Commission. The Company, Swing First, Florence, RUCO, and Staff appeared through counsel
 3 and cross-examined witnesses. The Company, Swing First, RUCO, and Staff presented evidence in
 4 the form of testimony and exhibits. At the hearing on April 27, 2009, an exhibit was presented
 5 which necessitated the suspension of the hearing schedule to allow time for briefing and oral
 6 argument on the admissibility and confidentiality of the exhibit. The hearing resumed on September
 7 21, 2009, and concluded on October 7, 2009. The parties filed post-hearing briefs, and the matter
 8 was taken under advisement pending the submission of a Recommended Opinion and Order
 9 ("ROO") for the Commission's consideration.

10 II. APPLICATION

11 For its water division, Johnson is requesting a decrease in revenues of \$2,879,022 from
 12 adjusted test year revenues of \$13,172,899, or a decrease of 21.86 percent, for a total revenue
 13 requirement of \$10,293,877.³ RUCO is recommending a decrease in revenues of \$73,718 from
 14 adjusted test year revenues of \$13,172,899, or a decrease of 0.56 percent, for a total revenue
 15 requirement of \$13,099,181.⁴ Staff is recommending a decrease in revenues of \$3,016,800 from
 16 adjusted test year revenues of \$13,172,899, or a decrease of 22.90 percent, for a total revenue
 17 requirement of \$10,156,099.⁵

18 For its wastewater division, Johnson is requesting an increase in revenues of \$2,325,720 over
 19 adjusted test year revenues of \$11,354,826, or an increase of 20.48 percent, for a total revenue
 20 requirement of \$13,680,546.⁶ RUCO is recommending a decrease in revenues of \$515,397, or a
 21 decrease of 4.54 percent, from adjusted test year revenues of \$11,354,014, for a total revenue
 22 requirement of \$10,838,617.⁷ Staff is recommending a revenue decrease of \$895,100, or a decrease
 23 of 7.88 percent, from adjusted test year revenues of \$11,354,014, for a total revenue requirement of
 24

25
 26 ³ Company Water Division Final Schedule A-1.

27 ⁴ RUCO Final Water Schedule SURR RLM-1.

28 ⁵ Staff Final Schedule JMM-W1.

⁶ Company Wastewater Division Final Schedule A-1.

⁷ RUCO Final Wastewater Schedule SURR RLM-1.

1 \$10,458,914.⁸ Florence requested that Staff's final schedules be adopted.⁹ Florence stated that
 2 having considered the testimony of each party's witnesses in this matter, Florence believes that
 3 Staff's recommendations will promote equity in the provision of water and wastewater treatment
 4 services rendered to the citizens of the Town of Florence.¹⁰

5 **III. RATE BASE**

6 For its water division, the Company proposes a fair value-rate base ("FVRB"), which is its
 7 original cost rate base ("OCRB"),¹¹ of \$3,539,562.¹² RUCO recommends a FVRB of
 8 (\$5,556,766).¹³ Staff recommends a FVRB of (\$13,863,166).¹⁴

10 For its wastewater division, the Company proposes a FVRB of \$17,479,735.¹⁵ RUCO
 11 recommends a FVRB of \$11,252,776.¹⁶ Staff recommends a FVRB of \$136,562.¹⁷

12 **A. Plant in Service**

13 For its water division, the Company proposes net utility plant in service of \$69,177,566.¹⁸
 14 RUCO recommends net utility plant in service of \$68,574,918.¹⁹ Staff recommends net utility plant
 15 in service of \$56,916,360.²⁰

17 For its wastewater division, the Company proposes net utility plant in service of
 18 \$115,454,166.²¹ RUCO recommends net utility plant in service of \$109,672,733.²² Staff
 19 recommends net utility plant in service of \$89,190,774.²³

21 ⁸ Staff Final Schedule JMM-WW1.

22 ⁹ Florence Br. at 1.

23 ¹⁰ *Id.* at 1-2.

¹¹ The Company did not prepare schedules showing the elements of Reconstruction Cost New Rate Base ("RCND").

¹² Company Water Division Final Schedule A-1.

24 ¹³ RUCO Final Water Schedule SURR RLM-1.

¹⁴ Staff Final Schedule JMM-W1.

25 ¹⁵ Company Wastewater Division Final Schedule A-1.

¹⁶ RUCO Final Wastewater Schedule SURR RLM-1.

26 ¹⁷ Staff Final Schedule JMM-WW1.

¹⁸ Company Water Division Final Schedule B-2, p. 1.

27 ¹⁹ RUCO Final Water Schedule SURR RLM-2.

²⁰ Staff Final Schedule JMM-W2.

28 ²¹ Company Wastewater Division Final Schedule B-2, p. 1.

²² RUCO Final Wastewater Schedule SURR RLM-2.

1. Inadequately Supported Plant

Staff is recommending a 10 percent disallowance of plant for inadequately supported plant costs, for a disallowance of \$7,433,707 for the water division²⁴ and \$10,892,391 for the wastewater division.²⁵ Staff calculated its proposed 10 percent disallowance on plant balances after first deducting the disallowances Staff recommended, as discussed further below, for plant not used and useful and for excess capacity plant.²⁶ Staff also proposed corresponding adjustments to accumulated depreciation balances²⁷ and depreciation expense.²⁸ Staff's witness testified that rather than disallowing the entire cost of unsubstantiated plant, Staff believes a minimal 10 percent disallowance is warranted.²⁹ RUCO took no position on the issue.³⁰ The Company argued that the 10 percent disallowance proposed by Staff is arbitrary, and that Staff should instead have identified and removed specific unsupported or inadequately supported plant costs.³¹

Staff stated that the Company failed to provide complete and authentic information in regard to its plant in accordance with Commission rules.³² Staff's witness testified that for independent third-party transactions, complete and authentic information is source documentation that includes but is not limited to vendor invoices for materials, supplies and labor, contracts, cancelled checks, time sheets, and reliable accounting records.³³ Staff stated that such information would allow identification of what was purchased and whether the item was allowable, and further, would allow

²³ Staff Final Schedule JMM-WW2.

²⁴ Staff Br. at 7; Staff Final Schedule JMM-W3, p. 1 of 2.

²⁵ Staff Br. at 7; Staff Final Schedule JMM-WW3, p. 1 of 2.

²⁶ Staff Br. at 7.

²⁷ Staff Final Schedules JMM-W9, JMM-WW9.

²⁸ Staff Br. at 7; Staff Final Schedules JMM-W22, JMM-WW20.

²⁹ Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 14.

³⁰ RUCO Br. at 4; RUCO Reply Br. at 1.

³¹ Co. Br. at 6; Co. Reply Br. at 5-6, 17-18.

³² Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 11.

A.A.C. R14-2-610(D)(1) and A.A.C. R14-2-411(D)(1) each provide, in part:

D. Accounts and records

1. Each utility shall keep general and auxiliary accounting records reflecting the cost of its properties, operating income and expense, assets and liabilities, and all other accounting and statistical data necessary to give complete and authentic information as to its properties and operations.

³³ Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 11.

Staff to identify the amount of the purchase and whether the amount was reasonable.³⁴ Staff stated that in the case of transactions with affiliates, Staff would request source documents in addition to fair competitive bids.³⁵ For Class A utilities such as Johnson, the Commission's Affiliate Interests Rules³⁶ require the affiliate to provide all source documentation.³⁷

The Company's witness asserted that Johnson "provided contracts, invoices, cancelled checks and/or main extension agreements which supported all but \$885,064 of the \$79,591,151 in plant in service."³⁸ The Company argued that the documentation that the Company provided, line extension agreements, construction agreements, invoices, receipts and other supporting documentation, are the types of documentation that a utility would traditionally submit to substantiate plant costs.³⁹ In the Company's rejoinder testimony, the Company provided a table representing a summary of its claimed plant costs listed by the type of supporting documentation provided to Staff.⁴⁰ Staff did not dispute that the Company submitted voluminous documents, but

³⁴ *Id.*

³⁵ *Id.*

³⁶ A.A.C. R14-2-801 *et seq.*

³⁷ Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 11.

³⁸ Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 12.

³⁹ Co. Reply Br. at 6.

⁴⁰ Rejoinder Testimony of Company witness Thomas Bourassa (Exh. A-4) Vol. II at 13-14. The table the Company's witness provided for its water division is reproduced here, without footnotes, as it was reproduced on page 6 of the Company's closing brief:

Type of Documentation	Cost Booked
LXA only	\$ 23,126,031
LXA plus back-up	\$ 15,402,986
Invoices	\$ 5,703,569
Contracts, Cancelled Checks, Bank Statements	\$ 29,222,823
Plant costs booked in earlier year but subsequently removed and not in test year rate base	\$ 81,087
Total	\$ 73,536,516
Total requested by Staff	\$ 74,421,579
Missing documentation	\$ 885,064

The Company's witness provided a similar table for its wastewater division in the Rejoinder Testimony of Company witness Thomas Bourassa (Exh. A-4) Vol. III at 12. The table the Company's witness provided for its wastewater division is reproduced here, without footnotes, as it was reproduced on page 18 of the Company's closing brief:

1 stated that Staff's audit and analysis could not verify the Company's claims.⁴¹ Staff stated that its
 2 audit process was made difficult in this case by the Company's failure to keep its records in
 3 accordance with the National Association of Regulatory Utility Commissioners ("NARUC")
 4 Uniform System of Accounts ("USOA") and Commission rules.⁴² While the USOA requires plant
 5 records to be kept by plant account, the documentation the Company provided was not provided by
 6 plant account, but instead by project, which could span several years. Staff's witness testified that
 7 the Company provided canceled checks showing the amount that Johnson paid to its affiliate, as
 8 opposed to the actual cost of the asset, and did not provide any evidence that costs charged by the
 9 affiliates were supported by competitive bids.⁴³ The Company also provided Staff with advances in
 10 aid of construction ("AIAC") agreements that pertained to the years 2000 to 2007, most of which
 11 were filed with the Commission in 2008.⁴⁴ Staff stated that while most of the AIAC agreements are
 12 with affiliates of Johnson, indicating that nearly all of the Company's plant was constructed by
 13 affiliates, Johnson did not maintain complete invoices and records to support the transactions with its
 14 affiliates.⁴⁵

15
 16
 17 Staff further stated that the difficulty presented by the Company's failure to properly keep its
 18 records was compounded by the lack of timeliness of the Company's response to Staff's data
 19
 20

Type of Documentation	Cost Booked
LXA only	\$ 31,275,040
LXA plus back-up	\$ 20,453,490
Invoices	\$ 8,197,464
Contracts, Cancelled Checks, Bank Statements	\$ 59,806,578
Total	\$ 126,810,065
Total requested by Staff	\$ 126,810,065
Missing documentation	\$ 1,047,941

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 22
 23
 24
 25
 26 ⁴¹ Staff Br. at 7-8.

27 ⁴² *Id.*, citing to Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 13.

28 ⁴³ Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 12-13.

⁴⁴ *Id.*

⁴⁵ Staff Br. at 8; Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 11-12.

1 requests.⁴⁶ During the course of its plant audit, Staff sent the Company additional data requests
 2 attempting to obtain information that the Company was not providing to Staff, and some of the
 3 Company's responses were vague or non-responsive, which in turn, resulted in more data requests.⁴⁷
 4 In one instance, the Company supplemented its response to an August 2008 data request on April 21,
 5 2009, after Staff had filed its direct testimony, and 21 days before Staff's surrebuttal testimony was
 6 due.⁴⁸ That supplemental data response included documents relating to water and sewer
 7 infrastructure for 17 subdivision projects.⁴⁹ Staff's witness testified that despite the late provision of
 8 the documents, Staff did nevertheless attempt to review them.⁵⁰

10 The Company argued that Staff should have identified and removed each specific plant item
 11 that was unsupported by the documentation it provided, and that because Staff's proposed
 12 disallowance does not apply to specific plant items, the Company "never received sufficient
 13 information to challenge the disallowance or raise a reasonable defense regarding the plant costs that
 14 were disallowed."⁵¹ As Staff pointed out, however, this argument presupposes that it is the
 15 Commission's Staff that bears the burden of proof. Staff argues that its conclusion regarding the
 16 inadequacy of the Company's documentation is corroborated by a similar conclusion reached in the
 17 2006 audit report prepared by Henry & Horne.⁵²

19 We believe the record does not support a specific disallowance figure for the water division,
 20 notwithstanding the Company's record keeping issues as discussed in this proceeding. Further, we
 21

22 ⁴⁶Staff Br. at 7-8, citing to Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 13.

23 ⁴⁷ Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-39) at 12 and (Exh. S-45) at 14.

24 ⁴⁸ Staff Br. at 8, citing to Hearing Exhibit S-46 (cover letter to copies of documents provided to support water and sewer infrastructure for 17 subdivision projects).

25 ⁴⁹ Hearing Exhibit S-46 (cover letter to copies of documents provided to support water and sewer infrastructure for 17 subdivision projects).

26 ⁵⁰ Tr. at 1712-1713.

27 ⁵¹ Co. Br. at 6-7.

28 ⁵² Staff Reply Br. at 3. Staff's witness testified that the Henry & Horne audit found the following: "Because of the inadequacy of accounting records for the years prior to 2006, we were unable to form an opinion regarding the amounts at which utility plant in service and accumulated depreciation are recorded in the accompanying balance sheet at December 31, 2006 (stated at \$168,974,434 and \$8,930,075 respectively), or the amount of depreciation expense from the year then ended (stated at \$1,799,271)." Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-39) at 12-13 and (Exh. S-45) at 15.

1 believe it is in the ratepayers' best interests for the Company to keep its records in accord with
2 NARUC USOA and Commission rules. While the Company argued that it made "herculean" efforts
3 to supplement the documents requested by Staff,⁵³ and that Staff, and not the Company, was at fault
4 for failing to organize the disparate and incomplete pieces of information the Company eventually
5 provided when prodded by Staff,⁵⁴ it is clear from the record that the Company's records were
6 inadequately kept, and could therefore not be produced in the manner necessary to demonstrate the
7 actual cost of its properties in a form that provides complete and authentic information for public
8 audit. It is incumbent upon all regulated utilities to keep the records necessary to demonstrate the
9 actual cost of its properties in a form that provides complete and authentic information. The
10 evidence in this case demonstrates that the Company has not complied with regulatory accounting
11 requirements, and has not met its burden of proof regarding the actual cost of its properties. While
12 additional evidence is not necessary to support a conclusion that the Company failed to meet its
13 burden, we find that the conclusion of Henry & Horne, an independent accounting firm employing
14 certified public accountants, regarding the adequacy of the Company's accounting records, provides
15 additional evidence corroborating Staff's position that the Company failed to maintain accounting
16 records sufficient to provide complete and authentic information to support its plant additions.⁵⁵ It is
17 reasonable and in the public interest to require the Company to keep its records in accordance with
18 the NARUC USOA and Commission rules in a manner that will support its filings with the
19 Commission.
20
21

22 a. AIAC and CIAC Related to Unsupported Plant

23 The Company argued that Staff's adjustment for inadequately supported plant is one sided
24 because it failed to consider corresponding adjustments associated with AIAC and Contributions in
25
26

27 ⁵³ Co. Reply Br. at 8.

28 ⁵⁴ See Co. Reply Br. at 8-16.

⁵⁵ Staff Reply Br. at 2.

1 Aid of Construction ("CIAC").⁵⁶ The Company argued that to ignore the necessary corresponding
 2 adjustments to AIAC or CIAC associated with disallowed plant would create a mismatch and result
 3 in an understatement of rate base to the detriment of the Company.⁵⁷

4 Staff accepted the Company's adjustments to CIAC and AIAC associated with the
 5 disallowances for excess capacity, for plant found not used and useful, and for certain items of post
 6 test year plant, discussed further below.⁵⁸ Staff stated that for inadequately supported plant, due its
 7 lack of confidence in the Company's records, it made no corresponding adjustments to CIAC and
 8 AIAC.⁵⁹ We agree with Staff that it is inappropriate to make adjustments to CIAC or AIAC when
 9 plant has been disallowed due to inadequate documentation, and make no such adjustment in this
 10 case.
 11

12 2. Post-Test Year Plant

13 Staff disputed the Company's proposal to include \$3,222,494 in plant in service related to
 14 post test year plant for the wastewater division.⁶⁰ According to the Company, the plant additions
 15 were not invoiced and paid until 2008.⁶¹ The \$3,222,494 total disputed amount consists of: (1)
 16 fourteen separate items, totaling \$2,201,386, classified as post test year plant in the Company's
 17 application, but reclassified, in the Company's rebuttal testimony, to test year plant in service; and
 18 (2) \$1,201,108 classified as post test year plant by the Company, comprised of \$486,714 for the
 19 Parks lift station and \$534,394 for the Queen Creek leach field.⁶²
 20

21 The disputed plant in service amount of \$2,201,386 was originally presented in the rate
 22 application as \$2,684,888 of post test year plant.⁶³ In a data response, the Company indicated that
 23

24 ⁵⁶ Co. Br. at 7; Co. Reply Br. at 7, 18-19.

25 ⁵⁷ Co. Br. at 7.

26 ⁵⁸ See Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-39) at 3-4.

27 ⁵⁹ Staff Reply Br. at 5; Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-39) at 12 and (Exh. S-45) at 15.

28 ⁶⁰ Co. Final Schedules B-2 Page 3 and 3.4.

⁶¹ Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 34.

⁶² Co. Br. at 21; Rebuttal Testimony of Company witness Bourrassa (Exh. A-2) Vol. III at 14-15; Company Final Schedules B-2, page 3 and 3.4.

⁶³ Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-44) at 8.

1 the \$2,684,888 was incurred for the Hunt Highway South force main project.⁶⁴ According to the
2 Company's accounting witness, the plant items were recorded in construction work in progress
3 ("CWIP") at the end of the test year, and had not been transferred into plant in service when the
4 application was filed.⁶⁵ The Company's witness testified that the Hunt Highway South force main,
5 which connects its Section 11 wastewater treatment plant ("Section 11 WWTP") to its Anthem
6 wastewater treatment plant ("Anthem WWTP"), was used during the test year to redirect flows from
7 the Anthem WWTP to the Section 11 WWTP when the Anthem WWTP was not yet ready for
8 operation.⁶⁶

9
10 The Company presented the Parks lift station and the Queen Creek leach field as post test
11 year plant on its final schedules.⁶⁷ The Parks lift station was constructed initially for a shopping
12 center that was started in 2007.⁶⁸ The Company asserted that without its construction, the Company
13 would have had to implement a costly process of vaulting and hauling the shopping center's
14 wastewater to its Pecan wastewater treatment plant ("Pecan WWTP").⁶⁹ In regard to the Queen
15 Creek leach field, the Company's witness testified that during the test year, all excess effluent flows
16 from the Pecan WWTP that required disposal were sent to the Trilogy Encanterra development, and
17 because the effluent flows were well in excess of the demands needed for the Encanterra golf course
18 in 2007, Johnson constructed the Queen Creek leach field to dispose of the excess effluent.⁷⁰

19
20 RUCO did not oppose the inclusion of the disputed plant items from plant in service.⁷¹ Staff
21 recommended a disallowance of the entire disputed amount of \$3,222,495 as post test year plant,
22

23
24 ⁶⁴ *Id.*

⁶⁵ Rebuttal Testimony of Company witness Thomas Bourrassa (Exh. A-2) Vol. III at 14.

⁶⁶ Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 34.

⁶⁷ Co. Final Schedules B-2 Page 3.4.

⁶⁸ Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 34.

⁶⁹ *Id.*

⁷⁰ *Id.* at 35.

27 ⁷¹ Co. Br. at 24; RUCO Br. at 4; RUCO Reply Br. at 1; RUCO Final Schedules SURR RLM-3. The Company claimed
28 on brief that RUCO accepted the Company's post test year plant of \$2,684,888 from the Company's direct filing plus
RUCO's proposed increase based on the Company's rebuttal filing, and RUCO did not refute the Company's claim in its
reply brief. RUCO's final schedules show an adjustment increasing plant in service by \$490,896 for post test year plant.

1 with an accompanying adjustment to reduce CIAC.⁷² Staff stated that the inclusion of post test year
2 plant would result in a mismatch of that plant with the revenues, expenses, and rate base of the test
3 year.⁷³ Staff's witness testified that matching is one of the most fundamental principles of
4 accounting and ratemaking, and the absence of matching distorts the meaning of operating income
5 and rate of return for measuring the fairness and reasonableness of rates.⁷⁴ Accordingly, Staff
6 explained, post test year plant should be recognized in rate base only in special and unusual
7 circumstances where failure to do so would create an inequity.⁷⁵ Staff stated that it has traditionally
8 recognized two scenarios in which recognition of post test year plant is appropriate: (1) when the
9 magnitude of the investment relative to the utility's total investment is such that not including the
10 post test year plant in the cost of service would jeopardize the utility's financial health; and (2) when
11 certain conditions exist as follows: (a) the cost of the post test year plant is significant and
12 substantial, (b) the net impact on revenue and expenses for the post test year plant is known and
13 insignificant or is revenue-neutral, and (c) the post test year plant is prudent and necessary for the
14 provision of services and reflects appropriate, efficient, effective, and timely decision-making.⁷⁶

17 The Company stated that all the plant was necessary to serve the test year level of customers,
18 and that Staff's engineering testimony noted that the Hunt Highway South force main was in use
19 during the test year.⁷⁷ The Company's accounting witness testified that the Company believes that
20 the post test year Parks lift station and the Queen Creek leach field projects are revenue neutral and
21 are necessary for reliability purposes, to serve the test year end level of customers.⁷⁸ The Company
22 argued that the Commission has allowed *pro forma* adjustments, including post-test year plant, in
23

24 ⁷² Staff Final Schedules JMM-WW3 Page 1 of 2; JMM-WW4; Surrebuttal Testimony of Staff witness Jeffrey Michlik
(Exh. S-39) at 3.

25 ⁷³ Staff Br. at 10.

26 ⁷⁴ Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-44) at 8.

27 ⁷⁵ *Id.*

28 ⁷⁶ Staff Br. at 10, citing to Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-44) at 9.

⁷⁷ Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 35, referring to Direct Testimony of Marlin Scott Jr. (Exh. S-36), Exhibit MSJ at 31.

1 order to ensure a proper matching of plant to test year customers and to more accurately reflect
2 reality during the period the rates will be in effect.⁷⁹

3 Staff argued that the Company's request to include post test year plant in rate base is
4 inconsistent with the Commission's normal treatment of post test year plant.⁸⁰ Staff acknowledged
5 that the Company, in rebuttal testimony, reclassified \$2,201,386 of plant from post test year plant to
6 test year plant. Staff explained, however, that because Staff lacked confidence in the Company's
7 documentation, Staff continued to classify it as post test year plant.⁸¹ While the Company charged
8 that "Staff failed to follow-up to determine whether such plant was in fact put into service in
9 2007,"⁸² Staff responded that the burden of proof lies with the Company, and not with Staff.⁸³ Staff
10 stated that the invoices the Company provided for post test year plant were from a Company
11 affiliate, Central Pinal Contracting, LLC ("Central Pinal").⁸⁴ The Company, contending that Central
12 Pinal is no longer a Company affiliate, did not allow Staff to verify the underlying affiliate records.⁸⁵
13 Staff therefore could not verify the invoices for the construction performed by the affiliate.⁸⁶ Staff
14 stated that it had little confidence in the integrity of some of the Company's records.⁸⁷ For example,
15 Staff stated that its confidence in the reliability of the Company's invoices was further diminished by
16 the disclosure of the invoice that was created to charge a Company employee for water that he
17 neither used nor was a guarantor for on the Swing First account.⁸⁸ In regard to the Company's
18 claims that the post test year plant was revenue neutral (i.e., will not add to test year revenues), Staff
19 asserted that the Company's claim is unsubstantiated, and that in the absence of reliable cost
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22

23 ⁷⁸ Rebuttal Testimony of Company witness Thomas Bourrassa (Exh. A-2) Vol. III at 15, citing to "Rebuttal Testimony of
24 Brian Tompsett."

⁷⁹ Co. Br. at 23.

⁸⁰ Staff Br. at 9.

⁸¹ Staff Reply Br. at 6.

⁸² Co. Br. at 22.

⁸³ Staff Reply Br. at 6.

⁸⁴ Staff Reply Br. at 6, Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-45) at 6.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Staff Reply Br. at 6.

1 documentation, it is difficult to determine whether any pro forma adjustments to rate base also
2 include known and measurable changes to revenues and expenses.⁸⁹ Staff argued that the Company
3 provided no credible evidence that the Parks lift station was necessary to serve the test year end level
4 of customers, other than conclusory statements that it was necessary to resolve potential problems.⁹⁰

5 It is undisputed that the Company did not incur the costs of the \$3,222,494 of plant during
6 the test year. The Company did not produce requested records necessary to verify the claimed plant
7 values, and in addition, failed to quantify the effects of the items of post test year plant on test year
8 revenues. Aside from the Company's statements that the Parks lift station and the Queen Creek
9 leach field are revenue neutral, the Company presented no evidence demonstrating their claimed
10 revenue neutrality. While Staff stated that the Parks lift station was used and useful during the test
11 year, Staff also noted that the Company did not perform some of the tasks that are performed when
12 installing an upgrade to a lift station, such as retiring plant that was replaced with the upgraded
13 plant.⁹¹ It is the Company's burden to provide reliable, accurate documentation showing the cost of
14 post test year plant and the Company did not meet that burden. The Company also failed to present
15 evidence demonstrating that the post test year plant would not add to revenues. The \$3,222,494
16 should therefore not be included in test year plant in service. The Company will have an opportunity
17 to request inclusion of this plant in its next rate case.
18
19

20 3. Plant Not Used and Useful

21 Staff stated that an inspection of the Company's water and wastewater systems revealed plant
22 that was not used and useful, and therefore recommended disallowance of \$4,127,019 of plant in the
23 water division and \$4,595,298 of plant in the wastewater division, with corresponding adjustments to
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27 ⁸⁸ Staff Reply Br. at 6.

⁸⁹ Staff Br. at 10-11, citing to Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-44) at 9.

⁹⁰ Staff Br. at 11, citing to Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 34.

28 ⁹¹ See Staff Reply Br. at 6, citing to Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-45) at 5.

1 CIAC and AIAC.⁹² RUCO accepted Staff's findings with respect to Staff's analysis of plant that is
 2 not used and useful.⁹³ Johnson accepted some of Staff's adjustments to remove plant Staff found not
 3 used and useful, but disagreed with Staff and RUCO's recommended removal of \$731,125 for 4
 4 miles of 12-inch mains (the "Rickey Main") from its water division.⁹⁴ For its wastewater division,
 5 the Company disagreed with Staff and RUCO's recommended removal of \$690,186 for
 6 approximately 4 miles of 8-inch sewer force mains ("Magma Sewer Force Main") and \$1,696,806
 7 for the Precision Wastewater Treatment Plant ("Precision WWTP").⁹⁵

8
 9 a. Rickey Main

10 The Company agreed that the Rickey Main is not being used to serve customers, but argued
 11 that it should be included in rate base nonetheless, because the Company "acted prudently in order to
 12 provide service."⁹⁶ The Company stated that it was contractually obligated to construct the Rickey
 13 Main pursuant to the Silverado Ranch Master Utility Agreement; that the plant was constructed
 14 within a roadway already paved by the developer, and that the plant is in place, ready to provide
 15 water to customers within Silverado Ranch, once homes are constructed.⁹⁷ The Company claimed
 16 that it would be "inappropriate and inequitable" to deny inclusion of the Rickey Main in rate base.⁹⁸
 17

18 Johnson has acknowledged that the \$731,125 Rickey Main is not being used to serve
 19 customers.⁹⁹ It is therefore not used and useful, and should not be included in rate base. Once the
 20 plant is being used to serve customers, the Company can request its inclusion in rate base in a rate
 21 proceeding. Staff's adjustments to plant in service and the corresponding CIAC and AIAC
 22 adjustments¹⁰⁰ are appropriate and will be adopted.
 23

24 ⁹² Staff Br. at 3; See Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-39) at 3-4.

25 ⁹³ RUCO Br. at 4; RUCO Reply Br. at 1; Rebuttal Testimony of RUCO witness Rodney Moore (Exh. R-2) at 4-5.

26 ⁹⁴ Co. Reply Br. at 2; Rebuttal Testimony of Company witness Thomas Bourassa (Exhibit A-2) Vol. II at 11-12.

27 ⁹⁵ Co. Br. At 19; Rebuttal Testimony of Company witness Thomas Bourassa (Exhibit A-2) Vol. III at 12.

28 ⁹⁶ Co. Br. at 8; Co. Reply Br. at 2-3.

⁹⁷ Co. Br. at 8; Rejoinder Testimony of Company witness Brian Tompsett (Exh. A-7) at 14.

⁹⁸ Co. Br. at 8.

⁹⁹ Tr. at 922-923.

¹⁰⁰ See Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-39) at 3-4.

b. Magma Sewer Force Main

Johnson disagreed with Staff's recommended removal of \$690,186 for approximately 4 miles of 8-inch sewer force mains to serve the Silverado Ranch development.¹⁰¹ Johnson acknowledged that the Magma Sewer Force Main is not currently serving customers, but argued that it should be included in plant in service because the Company was obligated to construct the plant and acted prudently in order to provide service.¹⁰²

Johnson has acknowledged that the \$690,186 Magma Sewer Force Main is not being used to serve customers.¹⁰³ It is therefore not used and useful, and should not be included in rate base. Once the plant is being used to serve customers, the Company can request its inclusion in rate base in a rate proceeding. Staff's adjustments to plant in service and the corresponding CIAC and AIAC adjustments¹⁰⁴ are appropriate and will be adopted.

c. Precision WWTP

Johnson disagreed with Staff's recommended removal of a total of \$1,696,806 for the cost of the Precision WWTP.¹⁰⁵ The Company argued that the Precision WWTP should be considered used and useful because the Arizona Department of Environmental Quality ("ADEQ") required the plant to be constructed as a condition of issuing subdivision approvals to developers within Johnson Ranch and other developments.¹⁰⁶

The Company also proffered the argument that because construction of the Precision WWTP was a prerequisite to the issuance of additional subdivision approvals in Johnson Ranch, the plant

¹⁰¹ Co. Br. at 19; Co. Reply Br. at 3; Rebuttal Testimony of Company witness Thomas Bourassa (Exhibit A-2) Vol. III at 11.

¹⁰² Co. Br. at 19-20; Rebuttal Testimony of Company witness Thomas Bourassa (Exhibit A-2) Vol. III at 12.

¹⁰³ Tr. at 922-923.

¹⁰⁴ See Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-39) at 3-4.

¹⁰⁵ Co. Br. at 19-20; Co. Reply Br. at 3; Rebuttal Testimony of Company witness Thomas Bourassa (Exhibit A-2) Vol. III at 12.

¹⁰⁶ Co. Br. at 19-20; Co. Reply Br. at 3; Rebuttal Testimony of Company witness Thomas Bourassa (Exhibit A-2) Vol. III at 12; Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 36.

1 was needed to serve the 2007 test year level of customers.¹⁰⁷ We disagree. Johnson acknowledged
 2 that the Precision WWTP is not being used to serve customers.¹⁰⁸ It is therefore not used and useful,
 3 and should therefore be excluded from plant in service. Once the plant is being used to serve
 4 customers, the Company can request its inclusion in rate base in a rate proceeding. Staff's
 5 adjustments to plant in service and the corresponding CIAC and AIAC adjustments¹⁰⁹ are
 6 appropriate and will be adopted.

7 **4. Excess Capacity**

8
 9 Staff recommended a disallowance of \$1,127,065 for Johnson's water system, and
 10 \$5,443,062 for the wastewater system, due to excess plant capacity.¹¹⁰ RUCO accepted Staff's
 11 findings with respect to Staff's analysis of plant that constitutes excess capacity.¹¹¹ Staff's witness
 12 testified that in evaluating capacity, Staff classifies plant which will be necessary within a five year
 13 planning period using peak demand factors and growth projections to be "extra capacity," and plant
 14 which will not be necessary within a five year planning period to be "excess capacity."¹¹² The five
 15 year planning period Staff used in this case began with the end of the Company's 2007 test year.¹¹³

16 **a. Anthem System Well and Storage Capacity**

17
 18 The Company's Anthem at Merrill Ranch ("Anthem") water system has two 600 gallon per
 19 minute ("GPM") wells and one 300 GPM well, for a total of three wells with total production
 20 capacity of 1500 GPM. The Anthem water system has one 1.0 million gallon ("MG") and one 0.5
 21 MG storage tank, for total storage capacity of 1.5 MG.¹¹⁴ At the end of the test year, the Anthem
 22 system served 857 customer connections.¹¹⁵ In its analysis, Staff utilized peak demand factors from
 23

24 ¹⁰⁷ Co. Reply Br. at 3-4.

25 ¹⁰⁸ Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 36.

26 ¹⁰⁹ See Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-39) at 3-4.

27 ¹¹⁰ Surrebuttal Testimony of Staff witness Marlin Scott, Jr. (Exh. S-37) at 3, 9.

28 ¹¹¹ RUCO Brief at 4; Rebuttal Testimony of RUCO witness Rodney Moore (Exh. R-2) at 4-5.

¹¹² Tr. at 1423.

¹¹³ Staff Br. at 5.

¹¹⁴ Direct Testimony of Staff witness Marlin Scott, Jr. (Exh. S-36) at Exhibit MSJ, p. 9.

¹¹⁵ Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5), Exhibit B.

1 the Company's Johnson Ranch system of 400 GPD per service connection for storage capacity and
 2 0.35 GPM per service connection for well capacity.¹¹⁶

3 1) Anthem System Well Capacity

4 Staff determined that pursuant to its peak demand and growth projections, the capacity of the
 5 Anthem system's Rancho Sendero Well No. 1 will not be needed within five years from the 2007
 6 test year, and therefore constitutes excess capacity that should be excluded from plant in service.¹¹⁷

7 Staff's recommended removal of the Anthem Rancho Sendero Well No. 1, a 600 GPM well, would
 8 reduce plant in service by \$693,827.¹¹⁸

9
 10 Staff's recommendation to remove the 600 GPM Anthem Rancho Sendero Well No. 1 from
 11 plant in service would leave the Anthem system with 900 GPM of well capacity in plant in service,
 12 which would allow for 2,571 connections, equating to the addition of 342 new service connections
 13 per year from 2008 through 2012.¹¹⁹ Johnson proposed to instead the use of a growth rate of 366
 14 new service connections per year, which is the actual known increase in customers for the year 2008,
 15 in order to calculate capacity needs.¹²⁰ Use of Johnson's growth estimate would yield 2,687
 16 customers at the end of 2012.¹²¹ Johnson's witness testified that use of the actual increase in
 17 Anthem system customers in 2008 as the growth rate to calculate capacity needs through 2012 is
 18 reasonable because "2008 was a disastrous year for the housing industry."¹²²

19
 20 Johnson also argued that the Rancho Sendero Well No. 1 is "necessary and integral to the
 21 operation of the Anthem at Merrill Ranch water system," and that "[a]ll three wells . . . are necessary
 22 to provide safe and reliable water service to Anthem at Merrill Ranch."¹²³ Johnson stated that if
 23

24 ¹¹⁶ Direct Testimony of Staff witness Marlin Scott, Jr. (Exh. S-36), Exhibit MSJ at 9.

25 ¹¹⁷ Staff Br. at 5.

26 ¹¹⁸ Direct Testimony of Staff witness Marlin Scott, Jr. (Exh. S-36) at Exhibit MSJ, p. 12; Surrebuttal Testimony of Staff witness Marlin Scott, Jr. (Exh. S-37) at 3; Tr. at 1464, 1468.

27 ¹¹⁹ Surrebuttal Testimony of Staff witness Marlin Scott, Jr. (Exh. S-37) at 4.

28 ¹²⁰ Co. Reply Br. at 4, citing Rebuttal Testimony of Brian Tompsett (Exh. A-5) at 8.

¹²¹ Rebuttal Testimony of Brian Tompsett (Exh. A-5) at 8.

¹²² *Id.*

¹²³ Co. Br. at 9.

Staff's recommendation to "remove the 600 GPM Rancho Sendero Well No. 1 as excess capacity" were adopted, and the other 600 GPM well were out of service for any reason, it would "leave the Company with only the 300 GPM Rancho Sendero Well #2 to serve all of Anthem at Merrill Ranch."¹²⁴ Johnson argued that because taking Anthem Rancho Sendero Well No. 1 out of service would create safety and reliability concerns for the Company and its customers, it should not be excluded from rate base as excess capacity.¹²⁵ Staff disagreed with the Company's arguments that exclusion of the Rancho Sendero Well No. 1 from rate base due to excess capacity would cause reliability concerns.¹²⁶ Staff also disagreed with the Company's arguments that it is inequitable to exclude excess capacity from rate base because the plant in question remains connected to the system.¹²⁷ Staff stated that exclusion of plant in service due to excess capacity is not an uncommon occurrence,¹²⁸ and that it would be inequitable to include plant in rate base when the plant capacity exceeds what is needed to serve customers.¹²⁹ We agree with Staff that excluding well capacity from plant in service does not require physical removal of the plant, and therefore does not cause reliability concerns. We also agree with Staff that it is inequitable to require ratepayers to pay rates that include a return on more plant than is reasonably projected to be required to serve customers during a reasonable planning horizon. The Company's arguments that the configuration of the Anthem system makes it "inequitable" to exclude plant from rate base are not convincing. Ratepayers should not be made to pay for unnecessary plant capacity due to the Company's chosen plant configuration.

There was no dispute in this proceeding regarding either the daily peak demand or the five year planning period Staff used in its excess capacity analysis for the Anthem system. In addition,

¹²⁴ Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 9; Co. Br. at 10.

¹²⁵ Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 7; Co. Br. at 11.

¹²⁶ Staff Reply Br. at 4-5.

¹²⁷ Staff Reply Br. at 5, citing Tr. at 1484.

¹²⁸ Tr. at 1472.

¹²⁹ Staff Reply Br. at 5.

no arguments were raised in response to the Company's assertions that its proposed growth projection of 366 new customers per year is reasonable. As Staff pointed out, utilizing the Company's proposed growth rate, under the Company's growth projection, the Anthem system's 300 GPM well constitutes excess capacity.¹³⁰ Based on the evidence in this proceeding we find that the 300 GPM Rancho Sendero Well No. 2 constitutes excess capacity, and that it is reasonable to exclude its cost from plant in service, along with the corresponding CIAC and AIAC adjustments. The actual cost of the 300 GPM Rancho Sendero Well No. 2 was not available in the record. We find it reasonable and appropriate to use half the documented cost of the 600 GPM Anthem Rancho Sendero Well No. 1, as a means of calculating a reasonable estimate of the cost of the 300 GPM Rancho Sendero Well No. 2 for purposes of excluding its excess capacity from plant in service. Therefore, \$346,914 will be excluded from the Company's water division plant in service as excess capacity, along with the corresponding CIAC and AIAC adjustments.

2) Storage Capacity

Staff determined that pursuant to its peak demand and growth projections, the capacity of the Anthem system's Rancho Sendero 0.5 MG storage tank will not be needed within five years from the 2007 test year.¹³¹ Staff's recommended removal of the Anthem Ranchero Sendero 0.5 MG storage tank would reduce plant in service by \$433,238.¹³² Staff relied on A.A.C. R18-503(B)¹³³ in making its excess storage capacity determinations for the Anthem water system.

¹³⁰ Staff Br. at 6, citing to Tr. at 1469. Based on Staff's undisputed proposed peak load of 0.35 GPM per service connection, at Johnson's proposed growth rate of 366 new connections per year, the Anthem system would require 940 GPM well capacity by the end of 2012, instead of Staff's recommended well capacity of 900 GPM.

¹³¹ Staff Br. at 5.

¹³² Direct Testimony of Staff witness Marlin Scott, Jr. (Exh. S-36) at Exhibit MSJ, p. 12; Surrebuttal Testimony of Staff witness Marlin Scott, Jr. (Exh. S-37) at 3; Tr. at 1464, 1468.

¹³³ A.A.C. R18-5-503 provides as follows:

R18-5-503. Storage Requirements

A. The minimum storage capacity for a CWS or a noncommunity water system that serves a residential population or a school shall be equal to the average daily demand during the peak month of the year. Storage capacity may be based on existing consumption and phased as the water system expands.

Johnson asserted that the Rancho Sendero 0.5 MG storage tank is "necessary and integral to the operation of the Anthem at Merrill Ranch water system," and that "both storage tanks are necessary to provide safe and reliable water service to Anthem at Merrill Ranch."¹³⁴ The Company argued that because it is not possible to pump water from the Rancho Sendero Well No. 2 into the distribution system without first pumping it into the 0.5 MG storage tank, it would be inequitable to remove it from plant in service as excess capacity.¹³⁵ The Company also argued that its storage requirement for the Anthem at Merrill Ranch subdivision is 1,397,240 gallons.¹³⁶ The Company reached this figure based on a two-day storage capacity, using a customer usage amount of 260 gallons per customer per day, which the Company stated that it uses for system design and planning purposes, and multiplying that number by the Company's projected 2,687 customers at the end of 2012.¹³⁷

Staff based its capacity allowance for the Anthem at Merrill Ranch subdivision on the requirements of A.A.C. R18-503(B), and determined that the necessary storage requirement for this system is 714,800 gallons per day for the five year planning period following the test year.¹³⁸ Staff disagreed with the Company's arguments that it is inequitable to exclude excess capacity from rate base because the plant in question remains connected to the system.¹³⁹ Staff argued that it is not an uncommon occurrence,¹⁴⁰ and that it would be inequitable to include plant in rate base when the plant capacity exceeds what is needed to serve customers.

The Company's arguments that the configuration of the Anthem system makes it "inequitable" to exclude plant from rate base are not convincing. We agree with Staff that excluding

B. The minimum storage capacity for a multiple-well system for a CWS or a noncommunity water system that serves a residential population or a school may be reduced by the amount of the total daily production capacity minus the production from the largest producing well.

¹³⁴ Co. Br. at 9.

¹³⁵ Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 11; Co. Br. at 12.

¹³⁶ Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 10-11; Co. Br. at 12.

¹³⁷ *Id.*

¹³⁸ Surrebuttal Testimony of Staff witness Marlin Scott, Jr. (Exh. S-37) at 5.

¹³⁹ Staff Reply Br. at 5, citing Tr. at 1484.

1 storage capacity from plant in service does not require physical removal of the plant, and therefore
 2 does not cause reliability concerns. We also agree with Staff that it is inequitable to require
 3 ratepayers to pay rates that include a return on more plant than what is reasonably projected to be
 4 required to serve customers during a reasonable planning horizon. Ratepayers should not be made to
 5 pay for unnecessary plant capacity due to the Company's chosen plant configuration.

6 We find, based on the evidence presented, that the Anthem system's Rancho Sendero 0.5
 7 MG storage tank constitutes excess capacity and will exclude its \$433,238 cost from plant in service
 8 in this case, along with the corresponding CIAC and AIAC adjustments.¹⁴¹

10 b. San Tan WWTP

11 Staff stated that the Santan Water Reclamation Plant ("San Tan WWTP") contains excess
 12 capacity because according to information provided by the Company, the 1.0 MGD Phase II
 13 capacity, at a cost of \$5,443,062, is not needed based upon growth projections for the five year
 14 planning period.¹⁴² The Company asserted that "the Phase II capacity will be put to use by late 2009
 15 to treat wastewater flow that will be redirected from Johnson Utilities' Pecan WWTP, which is
 16 currently nearing constructed capacity."¹⁴³ The Company's witness testified that the Company "is
 17 currently planning/engineering upgrades to the Morning Star Farms and Circle Cross lift stations,
 18 and planning/engineering the construction of one mile of new force main which will enable the
 19 Company to redirect flows from the Pecan WWTP to the Santan WWTP. By so doing, Johnson
 20 Utilities can delay the costly construction of an additional 2.0 MGD at the Pecan WWTP."¹⁴⁴
 21 Johnson argued that its decision to redirect wastewater flows to the Santan WWTP was prudent,
 22 because it gives the Company greater operational flexibility in treating wastewater flows in its
 23
 24
 25

26 ¹⁴⁰ Tr. at 1472.

27 ¹⁴¹ See Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-39) at 3-4.

28 ¹⁴² Tr. at 1425; Direct Testimony of Staff witness Marlin Scott, Jr. (Exh. S-36) at Exhibit MSJ, p 35; Surrebuttal Testimony of Staff witness Marlin Scott, Jr. (Exh. S-37) at 9-10.

¹⁴³ Co. Br. at 24; citing to Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 38.

¹⁴⁴ Co. Br. at 24; Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 39.

1 service area, and it allows the Company to obtain the maximum benefit from its combined
2 wastewater treatment capacity.¹⁴⁵

3 We make no determination at this time on whether Johnson's operational decisions regarding
4 the Pecan WWTP described in its witness' testimony are prudent. As Staff's witness testified, the
5 construction proposed by the Company would occur almost two years beyond the end of the 2007
6 test year, and would result in completely new flow data which would not match the test year flow
7 data.¹⁴⁶ It is undisputed that the Company's planned redirection of the wastewater flows from the
8 Pecan WWTP did not occur during the test year, and had yet to occur at the time of the hearing.¹⁴⁷
9 The evidence demonstrates that Phase II of the Santan WWTP was excess capacity during the test
10 year. Staff's adjustments to plant in service for the Phase II excess capacity and the corresponding
11 CIAC and AIAC adjustments¹⁴⁸ are appropriate and will be adopted.

12 5. Affiliate Profit

13
14 This case presents us with the issue of a utility's transactions with its affiliates or related
15 parties and how their profit should be treated in a ratemaking context. This Commission has
16 addressed the issue of affiliate profit by disallowing affiliate companies' profits, in the form of both
17 capitalized costs and expenses.¹⁴⁹ As previously discussed, the Company was unable to provide
18 adequate documentation to clearly show its plant costs, and the Company did not provide adequate
19 documentation of the profit charged to the Company by affiliates or related parties. The Company
20 did not dispute Staff's position that affiliate transactions require greater scrutiny than non-affiliate
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26 ¹⁴⁵ Co. Reply Br. at 5, citing to Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 38.

27 ¹⁴⁶ See Surrebuttal Testimony of Staff witness Marlin Scott, Jr. (Exh. S-37) at 10.

28 ¹⁴⁷ Staff Br. at 7.

¹⁴⁸ See Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-39) at 3-4.

¹⁴⁹ Staff Br. at 17, citing to Decision No. 69164 (December 5, 2006) (Black Mountain Sewer Corporation) and Decision No. 69664 (June 28, 2007) (Gold Canyon Sewer Company).

1 transactions,¹⁵⁰ and did not dispute the Commission's authority to exclude affiliate profit from plant
2 in service.¹⁵¹ RUCO did not brief this issue.

3 Two issues are in dispute in regard to an affiliate profit adjustment: (1) the amount of plant
4 in service that should be subject to the adjustment; and (2) the appropriate percentage of the
5 adjustment. Staff recommended that an affiliate profit adjustment of 7.5 percent should be applied
6 to the Company's entire plant in service balance. The Company recommended that an affiliate profit
7 adjustment of 1.75 percent be applied only to the amount of plant that the Company acknowledges
8 was constructed by affiliates.
9

10 Staff's recommended adjustments to remove capitalized affiliate profit from plant in service
11 are \$5,017,752 for the water division, and \$7,352,364 for the wastewater division.¹⁵² Staff made the
12 adjustments to plant in service balances following its other recommended adjustments. Staff's
13 proposed affiliate profit removal adjustment was applied to plant in service balances of \$66,903,360
14 for the water division, and \$98,031,517 for the wastewater division.¹⁵³
15

16 Johnson proposed affiliate profit removal adjustments to plant in service of \$469,832 for the
17 water division and \$800,179 for the wastewater division.¹⁵⁴ Johnson's proposal is based on the
18 amount of plant in service it acknowledged was constructed by affiliates: \$26,847,516 for the water
19 division, and \$45,724,508 for the wastewater division.¹⁵⁵

20 a. Affiliate/Related Party Constructed Plant in Service

21 In the course of analyzing the Company's application in regard to plant in service, Staff
22 determined that Company affiliates constructed substantially all the Company's plant.¹⁵⁶ The
23

24 ¹⁵⁰ Co. Reply Br. at 23.

25 ¹⁵¹ *Id.* at 24.

26 ¹⁵² Staff Final Schedules JMM-W3, page 1 of 2, JMM-W-8, JMM-WW3, page 1 of 2, JMM-WW8.

27 ¹⁵³ Staff Final Schedules JMM-W-8, JMM-WW8.

28 ¹⁵⁴ Co. Br. at 4, 17, citing to Rebuttal Testimony of Thomas Bourassa (Exh. A-2) Vol. II at 4, Vol. III at 5; Co. Reply Br. at 24; Company Final Schedules Water B-2, page 3.1, Wastewater B-2, page 3.1.

¹⁵⁵ Company Final Schedules Water B-2, page 3.1, and Wastewater B-2, page 3.1.

¹⁵⁶ Staff Br. at 12; Direct Testimony of Staff witness Jeffrey Michlik (S-38) at 12; Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-45) at 12.

1 Company argued that Staff “improperly assumed that all plant recorded on the Company’s books
2 was constructed by affiliates” and that its lower percentage affiliate profit adjustment should be
3 applied only to the plant the Company contends was constructed by affiliates.¹⁵⁷ However, with the
4 exception of contributed plant, which is excluded from rate base, the Company failed to demonstrate
5 that any entity other than Company affiliates or related parties constructed the Company’s water or
6 wastewater plant between 1998 and 2007.

7
8 Staff stated that the canceled checks and bank statements provided by the Company for the
9 purpose of supporting payments made for plant showed that payments were made to a Company
10 affiliate, and to no other construction entity.¹⁵⁸ The Company provided no documentation showing
11 any major construction performed by any entity other than affiliates since 1998.¹⁵⁹ Staff stated that
12 its audit of the Company’s bank records could not verify the amount that the Company claimed
13 represented affiliate-constructed wastewater plant, and that documentation provided by the Company
14 conflicted with some Company responses to data requests.¹⁶⁰ The 2006 external audit report of the
15 Company’s financial statements, prepared by Henry & Horne, specified in Note 3 that “substantially
16 all of the water and sewer construction for the Company” was affiliate contracted.¹⁶¹

17
18 The Company argued that there was a “lack of consistency” between a Staff witness’ prefiled
19 testimony that “[t]he Company used affiliates to construct approximately all plant after 1998” and
20 the witness’ negative response on cross-examination to a question regarding whether “100 percent of
21 Johnson Utilities’ plant was constructed by affiliates.”¹⁶² We find that there was no inconsistency
22
23
24

25 ¹⁵⁷ Co. Br. at 4, 15, 17, citing to Rebuttal Testimony of Thomas Bourassa (Exh. A-2) Vol. II at 4-5, Vol. III at 5; Co.
26 Reply Br. at 24.

¹⁵⁸ Staff Br. at 15-16; Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-45) at 11-12; Staff Reply Br. at 2.

¹⁵⁹ Surrebuttal Testimony of Staff witness Jeffrey Michlik (S-45) at 12.

¹⁶⁰ Staff Br. at 15-16; Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-45) at 11-12; Staff Reply Br. at 2.

¹⁶¹ Staff Reply Br. at 2; citing to Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-45) at 14.

¹⁶² Co. Reply Br. at 25, citing to Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-45) at 12 and Tr. 1576.

1 between the witness' response, which explained that some plant developer-contributed plant was not
2 constructed by affiliates, and the prefiled testimony.¹⁶³

3 (1) Affiliate/Related Party Ownership

4 Johnson is organized as a limited liability corporation, and its membership is comprised of
5 the George Johnson Revocable Trust, George and Jana Johnson, co-trustees,¹⁶⁴ and Connorg, LLC
6 ("Connorg").¹⁶⁵ The members of Connorg are Brian Tompsett, Executive Vice President of Johnson
7 Utilities, and his wife Susan Tompsett.¹⁶⁶

8
9 During its analysis of the application, Staff requested information from the Company
10 regarding the contracting companies that constructed plant for the Company's water and wastewater
11 divisions for the years 1997-2007.¹⁶⁷ Staff asked the Company to identify the owners of the
12 contracting companies, and to indicate whether or not the contracting company or companies were
13 affiliated with Johnson Utilities, and if so, how.¹⁶⁸ The Company provided information for the years
14 1998 through 2007, and stated that no plant was constructed prior to 1998.¹⁶⁹ For the years 1998
15 through 2003, Boulevard Contracting Company, Inc., which was owned by George Johnson,
16 constructed water and wastewater plant for the Company.¹⁷⁰ For the years 2004 through 2006, the
17 Company identified Central Pinal as the contracting company that constructed plant for the
18 Company's water and wastewater divisions.¹⁷¹ The Company identified the owners of Central Pinal
19 from 2004 through 2006 as Crisbar, LLC, Connorg, Chris Johnson Family Trust, Barjo LLC, and
20
21
22

23 ¹⁶³ Tr. at 1576.

24 ¹⁶⁴ Jana Johnson is George Johnson's wife. Tr. at 862.

25 ¹⁶⁵ Hearing Exh. SF-1.

26 ¹⁶⁶ Tr. at 867; Exh. S-20.

27 ¹⁶⁷ Exh. S-20.

28 ¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ Exh. S-20. Corporations Division records show that Boulevard Contracting Company, Inc. was incorporated on December 18, 1998, with George Johnson and Jana Johnson as officers, and that it was administratively dissolved for failure to file its annual report. Staff Br. at 12.

¹⁷¹ Exh. S-20.

1 Margaret Bullard.¹⁷² The members of Crisbar, LLC are Atlas Southwest, Inc. and the George H.
 2 Johnson Revocable Trust.¹⁷³ Atlas Southwest, Inc.'s officers and directors are George H. Johnson
 3 and Jana S. Johnson.¹⁷⁴ For the year 2007, the Company also identified Central Pinal as a
 4 contracting company that constructed plant for the Company, but indicated that in 2007 Central
 5 Pinal was owned by the Roadrunner Trust.¹⁷⁵ Prior to January 2007, the manager of Central Pinal
 6 was Atlas Southwest, Inc.,¹⁷⁶ and the member was Crisbar, LLC.¹⁷⁷ In January of 2007, Barbara A.
 7 Johnson and Christopher Johnson, the daughter and son of George Johnson,¹⁷⁸ became the managers
 8 of Central Pinal, and the sole member of Central Pinal became the Roadrunner Trust, with Barbara
 9 A. Johnson and Christopher Johnson, co-trustees.¹⁷⁹

11 Other Johnson affiliates that have provided services to the Company are Specific
 12 Engineering, LLC ("Specific") and Shea Utility Services, Inc. ("Shea").¹⁸⁰ From 2004 through
 13 2008, Specific's member and manager were Atlas Southwest, but in 2008, its membership was
 14 changed to the Roadrunner Trust.¹⁸¹ Shea currently provides management services and operations
 15 for the Company.¹⁸² In a 2004 annual report, George and Jana Johnson were listed as Shea's
 16 president and secretary/treasurer, respectively, Brian Tompsett was listed as executive vice
 17 president, and George and Jana Johnson were listed as directors.¹⁸³ In January of 2007, however,
 18 George Johnson's children, Christopher and Barbara Johnson, took office as president, secretary, and
 19 treasurer, and as directors, of Shea.¹⁸⁴

22 ¹⁷² *Id.*

23 ¹⁷³ Exh. S-10.

24 ¹⁷⁴ Exh. S-9.

25 ¹⁷⁵ Exh. S-20.

26 ¹⁷⁶ Atlas Southwest, Inc.'s officers and directors are George H. Johnson and Jana S. Johnson. Exh. S-9.

27 ¹⁷⁷ Staff Br. at 12; citing to Exhs. S-3 and S-4.

28 ¹⁷⁸ Tr. at 856.

¹⁷⁹ Exh. S-4.

¹⁸⁰ Exh. S-2.

¹⁸¹ Staff Br. at 13; Exhs. S-5, S-6.

¹⁸² Tr. 864.

¹⁸³ Exh. S-12.

¹⁸⁴ Exh. S-13.

b. Reasonableness of Affiliate/Related Party Transactions

Staff stated that it could not determine whether the transactions between Johnson and its affiliates were arm's length transactions.¹⁸⁵ Staff was concerned by the fact that Mr. Tompsett was both an executive of the Company and an owner of its affiliate Central Pinal while Central Pinal was building water and wastewater plant for the Company.¹⁸⁶ The fact that Mr. Tompsett was compensated for his roles both at Shea and the Company¹⁸⁷ also caused Staff to question the arm's length nature of transactions between the Company and its affiliates.¹⁸⁸ Staff was unable to conduct an audit on the Company's affiliate construction project bids to determine whether they were fair and protected ratepayers from being charged too much for plant, because while the Company claims that it competitively bid its construction projects, the Company did not retain any bids.¹⁸⁹

The Company, contending that Central Pinal is no longer a Company affiliate, did not allow Staff to verify the underlying affiliate records associated with documentation regarding plant construction by Central Pinal.¹⁹⁰ The Company's witness testified that the change of membership and management of Central Pinal renders it no longer an affiliate of Johnson Utilities.¹⁹¹ According to Staff, the Company also contended that it was not required to disclose any transactions with Specific, because in 2008, it ceased being an affiliate of Johnson.¹⁹²

Staff argued that even accepting the Company's contention that Central Pinal, Shea and Specific are no longer Company affiliates due to the changes in ownership, family relationships make any transactions between the Company and these entities related party transactions, which should be subject to greater scrutiny.¹⁹³ Staff asserted that because the son and daughter of the

¹⁸⁵ Staff Br. at 15.

¹⁸⁶ Staff Br. at 15-16.

¹⁸⁷ Tr. at 864.

¹⁸⁸ Staff Br. at 13.

¹⁸⁹ Staff Br. at 15, citing to Direct Testimony of Staff witness Jeffrey Michlik (S-38) at 12.

¹⁹⁰ Staff Reply Br. at 6, Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-45) at 6.

¹⁹¹ Tr. at 857.

¹⁹² Staff Br. at 13.

¹⁹³ Staff Br. at 15.

owner and founder of Johnson Utilities are owners of the entity that provides construction services to the Company, transactions between the Company and Central Pinal are related party transactions within the definition provided by the Financial Accounting Standards Board ("FASB") in its Statement of Financial Accounting Standards No. 57 ("FAS 57").¹⁹⁴ Staff argued that although a transaction between related parties is not *per se* unreasonable, the Company has the burden of proving that resulting costs are reasonable.¹⁹⁵

There is no dispute that the Company reported Central Pinal, Shea, and Specific Engineering, LLC as affiliates for the calendar year ending December 31, 2006.¹⁹⁶ The Commission's Public Utility Holding Companies and Affiliated Interests Rules ("Affiliated Interests Rules") define "affiliate" as follows:

"Affiliate," with respect to the public utility, shall mean any other entity directly or indirectly controlling or controlled by, or under direct or indirect common control with the public utility. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any entity, shall mean the power to direct the management policies of such entity, whether through ownership of voting securities, by contract, **or otherwise**.
A.A.C. R14-2-801(1) (emphasis added).

The Company denied that it engaged in any related party transactions.¹⁹⁷ The Company disagreed that "certain entities with which the Company has done business should be treated as affiliates based solely upon the familial relationships of members of these entities and members of Johnson Utilities."¹⁹⁸ The Company argued, without citation, that "[o]nly an entity which can be directed is deemed to be an affiliate" and that "[a]bsent sufficient ownership of voting securities,

¹⁹⁴ Staff Br. at 15, citing to FAS 57, which provides guidance for accounting disclosure of related party transactions. FAS 57 provides examples of related party transactions, including transactions between (a) a parent company and its subsidiaries; (b) subsidiaries of a common parent; (c) an enterprise and trusts for the benefit of employees, such as pension and profit-sharing trusts that are managed by or under the trusteeship of the enterprise's management; (d) an enterprise and its principal owners, management, or members of their immediate families; and (e) affiliates.

¹⁹⁵ Staff Br. at 15, citing to *Florida Power Corp. v. Cresce*, 413 So.2d 1187 (Fla. 1982) at 1191.

¹⁹⁶ Exh. S-2.

¹⁹⁷ Exh. S-18; Tr. at 897-900.

¹⁹⁸ Co. Reply Br. at 23.

1 contract or some other right to direct management policies, the other entity is not an affiliate."¹⁹⁹
 2 The Company then argued that other than "alleged family relations," no evidence was provided that
 3 the Company has any control over "these separate entities."²⁰⁰ For its proposition that control cannot
 4 be imputed through family attribution, the Company cited to two United States Court of Appeals
 5 opinions involving decedents' estates.²⁰¹

6 The Company's arguments, including the cited cases, are not relevant to the issue in this case
 7 of the appropriate ratemaking treatment of profit provided by a utility company to an affiliate or
 8 related party, which has been brought to the fore by the Company's failure to produce adequate plant
 9 documentation. Although given the opportunity to do so, Johnson Utilities presented no evidence
 10 that the costs of the utility plant were determined as a result of arm's length transactions. Neither
 11 has the Company presented evidence demonstrating that Central Pinal, which it formerly reported as
 12 an affiliate,²⁰² and which currently shares common or familial ties with the owners and directors of
 13 Johnson Utilities,²⁰³ is not subject to direct or indirect control by the Company's members.

14
 15 c. Affiliate/Related Party Profit Adjustment

16
 17 As Staff pointed out, a regulated utility has a duty to serve its customers in a fair and
 18 equitable manner, and this includes the obligation to get the best price for services to its
 19 customers.²⁰⁴ A regulated utility has an obligation not to promote profitability for itself or another
 20 interested company in a transaction that may not be at arm's length to the detriment of its
 21 customers.²⁰⁵ Fair competitive bids protect ratepayers from being charged too much for plant.
 22 While the Company claimed that there was a competitive bidding process for construction of its
 23

24 ¹⁹⁹ Company Reply Br. at 23-24.

25 ²⁰⁰ Co. Reply Br. at 23.

26 ²⁰¹ *Propstra v. U.S.*, 680 F.2d 1248 (9th Cir. 1981) (without an explicit directive from Congress, courts cannot require
 27 executors to make inquiries into the feelings, attitudes, and anticipated behavior of those holding undivided interests in
 28 property owned by estates, legatees, or heirs), and *Bright v. U.S.*, 658 F.2d 999 (5th Cir. 1981) (no element of control
 could be attributed to decedent in determining value of decedent's interest in stock).

²⁰² Exh. S-2.

²⁰³ Exhs. S-4 (Central Pinal), S-6 (Specific Engineering, LLC), and S-13 (Shea).

²⁰⁴ See Staff Br. at 15.

1 plant, which was subsequently all completed by entities who were either affiliates or related parties,
2 the Company's claim cannot be verified, as the Company stated that it did not retain any bids. As
3 Staff argued, the reasonableness of affiliate costs must be determined using some independent
4 standard, and the Company could have done much more to gather sufficient, competent and reliable
5 evidence to meet its burden of production.²⁰⁶ Due to the Company's failure to present bids for
6 regulatory inspection, no audit could be conducted to determine whether the transactions conducted
7 by the Company with affiliates or related parties were at arm's length. The evidence presented
8 shows that an executive of the Company was an owner of Central Pinal, which constructed the plant
9 which the Company is requesting be put in plant in service at full cost. The fact that ownership of an
10 affiliate changed after relevant costs were incurred does not release the Company from its obligation
11 to provide the Commission with adequate information about its transactions, be they affiliate
12 transactions, related party transactions, or otherwise, for ratemaking purposes. The Company failed
13 to keep adequate records of its affiliate/related party transactions to demonstrate that the costs the
14 Company paid for plant were reasonable and appropriate, and were not detrimental to ratepayers.
15

16
17 Because the Company failed to produce adequate documentation, the record in this case does
18 not allow us to find that the amounts the Company paid to affiliates/related parties were competitive,
19 fair and reasonable. In order to achieve just and reasonable rates for the Company's ratepayers, an
20 adjustment must be made to remove the inflated cost associated with the profit the Company paid to
21 affiliates/related parties for plant construction. Staff proposed adjustments subtracting affiliate profit
22 from the Company's water and wastewater plant in service, after all other plant in service
23 adjustments. After considering all the evidence presented, we find that the record is insufficient to
24 support specific plant in service adjustments for the water division. Rather than estimating an
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27

28 ²⁰⁵ See *id.*

²⁰⁶ See Staff Br. at 16.

1 appropriate adjustment and excluding plant costs from the Company's rate base, we believe it is
2 appropriate to make adjustments to the authorized operating margin.

3 d. Affiliate/Related Party Transactions

4 The Company, as a Class A Utility, is subject to the Commission's Affiliate Interests Rules.
5 As set forth in the discussion above, the Company recently restructured several of its affiliates. In
6 the course of this proceeding, no party made a recommendation regarding a finding whether the
7 Company is in compliance or non-compliance with the Affiliate Interests Rules, and we make none
8 at this time. We note, however, that evidence in this proceeding indicates that the Company used the
9 fact that Central Pinal had been restructured as the basis for its refusal to provide documentation
10 from Central Pinal to Staff upon Staff's request. The Company offered no explanation or argument
11 regarding the reasons for any of the restructuring.
12

13 The affiliate profit adjustment is necessary in this case due to the Company's lack of
14 adequate record keeping and its failure to document competitive bids. As a regulated utility, it is
15 incumbent upon the Company to ensure that its dealings are arm's length, transparent, and well-
16 documented. Based on the evidence in this proceeding, we find that it is reasonable and appropriate
17 to require the Company to prepare an action plan that indicates the specific steps it will take to
18 demonstrate, by means of its day to day record keeping regarding transactions between the Company
19 and all entities with which it conducts business, including, but not limited to, its affiliates and related
20 parties, that its dealings are arm's length, transparent, and well-documented. We will require the
21 Company to file the plan for Staff's review, and will require Staff to assess the plan and its
22 adequacy, and to file a report with Staff's findings and recommendations on the action plan
23 accompanied by a Recommended Order for Commission approval or disapproval of the Company's
24 action plan. In order to allow adequate time for the Company to retain a consultant to assist it in the
25
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28

1 preparation of its action plan, we will allow the Company 90 days to prepare the plan and make the
2 filing.

3 **B. Contributions in Aid of Construction ("CIAC") - Unexpended Hook-Up Fees**
4 **("HUF")**

5 Johnson opposed the recommendation of Staff and RUCO to include unexpended hook-up
6 fees ("HUFs") in rate base in the amount of \$6,931,078 for the water division and \$16,505 for the
7 wastewater division.²⁰⁷ Johnson collects HUFs in advance of the time the Company will be expected
8 to provide service to the customers for whom the HUFs are credited, and the time between collection
9 of the HUFs, the time the capital improvements to provide capacity are constructed, and the date the
10 customer connects to the system can be one year or longer.²⁰⁸ The Company argued that including
11 unexpended HUFs in rate base creates a mismatch in rate base and gives existing ratepayers a
12 windfall because they get credit for HUFs collected on behalf of future customers who have not yet
13 connected to the system.²⁰⁹ The Company argued that its advance collection of HUFs ensures that
14 funds are available for new and needed capacity when construction begins.²¹⁰ The Company argued
15 that the HUFs are restricted and can only be spent on new capacity; that the Company does not
16 benefit from excluding unexpended HUF from rate base; and existing ratepayers are not harmed by
17 it.²¹¹ The Company argued that Staff's recommendation to exclude CIAC and AIAC related to
18 excess capacity and not used and useful supports the Company's position that HUFs should be
19 excluded from rate base.²¹² The Company also argued that according to the NARUC Uniform
20 System of Accounts, Section 271, contributions are not CIAC until they offset used and useful
21
22
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24

25 ²⁰⁷ Co. Br. at 13-14, 26.

²⁰⁸ Co. Br. at 14, citing to Rebuttal Testimony of Company witness Thomas Bourassa (Exh. A-2) Vol. II at 15.

26 ²⁰⁹ Co. Br. at 14, citing to Rebuttal Testimony of Company witness Thomas Bourassa (Exh. A-2) Vol. II at 15-16; Co.
Reply Br. at 26.

27 ²¹⁰ Co. Reply Br. at 26, citing to Rebuttal Testimony of Company witness Thomas Bourassa (Exh. A-2) Vol. II at 16.

²¹¹ Co. Br. at 14, citing to Rebuttal Testimony of Company witness Thomas Bourassa (Exh. A-2) Vol. II at 16-17;
Co. Reply Br. at 26.

28 ²¹² Co. Br. at 14-15, citing to Rebuttal Testimony of Company witness Thomas Bourassa (Exh. A-4) Vol. II at 11.

1 plant.²¹³ The Company argued that there is a transition period from the time a utility receives
 2 contributed money and the time the contributed money has been spent and is reflected as an offset to
 3 used and useful plant, and that because unexpended dollars and associated construction work in
 4 progress are not used and useful plant, the associated CIAC is technically in transition, and should
 5 therefore be excluded from rate base.²¹⁴

6 RUCO argued that "advances represent customer-supplied funds that are properly deducted
 7 from the Company's rate base."²¹⁵ RUCO recommended that the Company be afforded the same
 8 rate base treatment of CIAC as other Arizona utilities, with contributions being booked as CIAC
 9 when they are received, and treated as a deduction to rate base.²¹⁶ RUCO framed the dispute as a
 10 timing argument as to when the HUFs should be treated as CIAC, noting that a utility typically
 11 builds infrastructure in advance and then collects HUFs for each new connection.²¹⁷ RUCO stated
 12 that normal accounting procedure for HUFs should not be changed to accommodate the Company's
 13 choice to collect HUFs prior to providing service.²¹⁸ RUCO stated that neither the NARUC
 14 definition of CIAC nor the Commission's rules differentiate when the contributions are received and
 15 when the contributions are expended.²¹⁹

16 Staff stated that removal of unexpended CIAC from the Company's CIAC account is
 17 inconsistent with the NARUC USOA.²²⁰ Staff stated that this Commission recently rejected, in
 18 Decision No. 71414 (December 8, 2009), the very treatment of unexpended CIAC proposed by the
 19
 20
 21

22 ²¹³ Co. Reply Br. at 26. The NARUC USOA provides as follows:

23 271. Contributions in Aid of Construction

24 A. This account shall include:

25 1. Any amount or item of money, services or property received by a utility from any person or governmental
 agency, any portion of which is provided at no cost to the utility, which represents an addition or transfer to the
 capital of the utility, and which is utilized to offset the acquisition, improvement to offset the utility's property,
 facilities or equipment used to provide utility services to the public.

26 ²¹⁴ Co. Reply Br. at 26.

27 ²¹⁵ RUCO Reply Br. at 2, citing to Decision No. 70011 (November 27, 2007) (UNS Gas, Inc.).

28 ²¹⁶ RUCO Br. at 4-5.

²¹⁷ RUCO Reply Br. at 2-3.

²¹⁸ RUCO Reply Br. at 3.

²¹⁹ RUCO Reply Br. at 2.

²²⁰ Direct Testimony of Staff witness Jeffrey Michlik (S-38) at 18.

1 Company.²²¹ Staff stated that Decision No. 71414 also discontinued that utility's authority to collect
 2 HUFs, as Staff is recommending in this case.²²²

3 We are not persuaded by the Company's arguments in favor of departing from the normal
 4 ratemaking treatment of CIAC. We agree with Staff that the NARUC USOA definition of CIAC
 5 does not hinge upon whether or not CIAC is expended or unexpended, as the Company argued, but
 6 on whether or not (1) the CIAC was provided by someone other than the owner, (2) the CIAC is
 7 non-refundable, and (3) the purpose of the CIAC is to fund plant.²²³ We recognize that the Company
 8 collects HUFs well in advance of providing service to customers for whom the HUF is credited, and
 9 that it is the Company's practice in regard to the timing of its HUF collection that is responsible in
 10 part for the resulting magnitude of CIAC balances in the test year. As Staff and RUCO argued, the
 11 actual test year end balances of CIAC should be included in rate base, and Staff's adjustments for the
 12 water and wastewater divisions will therefore be adopted.
 13

14 C. Fair Value Rate Base Summary

15 Based on the discussion of rate base issues set forth above, we find the Company's OCRB
 16 for its water division to be (\$2,414,613) and for its wastewater division to be \$136,562. As the
 17 Company did not prepare RCND schedules, the OCRB for its water and wastewater divisions
 18 constitute its FVRB.
 19

20 IV. OPERATING INCOME ISSUES

21 A. Central Arizona Groundwater Replenishment District ("CAGRDR")

22 The CAGRDR was established in 1993 by the Arizona legislature to serve as a groundwater
 23 replenishment entity for its members.²²⁴ The CAGRDR is operated by the Central Arizona Water
 24

25
 26 ²²¹ Staff Reply Br. at 5.

27 ²²² Staff Br. at 5.

28 ²²³ Direct Testimony of Staff witness Jeffrey Michlik (S-38) at 18; citing to NARUC USOA 271, Contributions in Aid of Construction.

²²⁴ Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 17.

1 Conservation District, which operates the Central Arizona Project.²²⁵ The CAGR D provides a
 2 mechanism for landowners and designated water supply providers such as Johnson Utilities to
 3 demonstrate a 100-year water supply under Arizona's assured water supply rules ("AWS Rules"),
 4 which became effective in 1995.²²⁶ Members of the CAGR D must pay the CAGR D to replenish (or
 5 recharge) any groundwater pumped by the member that exceeds the pumping limits imposed by the
 6 AWS rules.²²⁷ The CAGR D includes the Phoenix, Tucson and Pinal County active management
 7 areas ("AMAs").²²⁸ Johnson Utilities completed the process for becoming a Member Service Area
 8 of the CAGR D on or about June 9, 2000.²²⁹ Joining the CAGR D is one of the steps in the process of
 9 becoming a designated provider, which means a water provider that has demonstrated to the Arizona
 10 Department of Water Resources ("ADWR") that it has a 100-year water supply.²³⁰ The AWS Rules
 11 were designed to protect groundwater supplies within each AMA and to ensure that people
 12 purchasing or leasing subdivided land within an AMA have a water supply of adequate quality and
 13 quantity.²³¹ The AWS Rules require new subdivisions to demonstrate to ADWR that a 100-year
 14 water supply is available to serve the subdivision before home sales can begin.²³² An assured water
 15 supply can be demonstrated in one of two ways: the subdivision owner can prove an assured water
 16 supply for the specific subdivision and receive a certificate of assured water supply (CAWS") from
 17 ADWR; or alternatively, a subdivision owner can receive service from a city, town, or private water
 18 company that has been designated by ADWR as having a designated water supply.²³³

24 ²²⁵ Co. Br. at 28.

25 ²²⁶ Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 17.

26 ²²⁷ *Id.*

27 ²²⁸ *Id.*

28 ²²⁹ *Id.* at 18.

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

1 The costs of the CAGR D are covered by a replenishment assessment levied on CAGR D
 2 members.²³⁴ Designated water supply providers such as Johnson Utilities that serve a Member
 3 Service Area pay a replenishment tax directly to the CAGR D according to the number of acre-feet of
 4 "excess groundwater" they deliver within their service areas during a year.²³⁵ The amount due the
 5 CAGR D is based on CAGR D's total cost per acre-foot of recharging groundwater, including the
 6 capital costs of constructing recharge facilities, water acquisition costs, operation and maintenance
 7 costs and administrative costs.²³⁶ By statute, the replenishment tax must be calculated separately for
 8 each AMA.²³⁷ Johnson Utilities is a designated provider in both the Phoenix and Pinal County
 9 AMAs.²³⁸ Johnson had a CAGR D assessment of \$883,842 in the test year.²³⁹ Instead of recovery of
 10 the test year amount of CAGR D expense, Johnson requested approval of a CAGR D adjustor
 11 mechanism in this case.²⁴⁰

13 The Company, RUCO and Staff agreed that the CAGR D is an important tool in Arizona's
 14 groundwater conservation efforts, and that the Company should recover its CAGR D expenses. The
 15 Company's ratepayers and the general public benefit from the Company having a designation of
 16 assured water supply, because such designations result in more efficient regional planning than the
 17 alternative of requiring individual developers within a certificated area to each obtain a CAWS.²⁴¹

19 As RUCO stated, the issue before us is not whether to allow the Company to recover its
 20 CAGR D expense, but the manner of the expense recovery.²⁴² Staff recommended that an adjustor
 21 mechanism be established, but with specific conditions that would require the Company to keep the
 22 Commission closely informed of the CAGR D fee calculation and would allow the Commission to
 23

24 ²³⁴ *Id.*

25 ²³⁵ *Id.* at 18-19.

26 ²³⁶ *Id.* at 19.

27 ²³⁷ *Id.*

28 ²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ Staff Br. at 20.

²⁴² RUCO Reply Br. at 5.

1 closely monitor the Company's collection of CAGR D fees and the Company's treatment of monies
2 collected to pay the CAGR D fees. The Company was in favor of the establishment of a CAGR D
3 recovery mechanism, but was unwilling to agree to abide by the conditions that Staff argued are
4 necessary to safeguard the Company's ratepayers.

5 **1. Staff Proposed Adjustor and Conditions**

6 Staff recommended that the Company recover its CAGR D tax assessment through the use of
7 an adjustor mechanism, subject to specific enumerated conditions. Staff recommended that the
8 CAGR D adjustor mechanism only be authorized with the following conditions attached:
9

- 10 1. The initial adjuster fee shall apply to all water sold after the date new
11 rates from this case become effective. In order to calculate this initial
12 fee, the Company shall submit the 2008 data, as per condition No. 7
13 below, within 30 days of the date of the final order in this matter.
- 14 2. The Company shall, on a monthly basis, place all CAGR D monies
15 collected from customers in a separate, interest bearing account
16 ("CAGR D Account").
- 17 3. The only time the Company can withdraw money from the CAGR D
18 Account is to pay the annual CAGR D fee to the CAGR D, which is due
19 on October 15th of each year.
- 20 4. The Company must provide to Staff a semi-annual report of the
21 CAGR D Account and CAGR D use fees collected from customers and
22 paid to the CAGR D, with reports due during the last week of October
23 and the last week of April each year.
- 24 5. The Company must provide to Staff, every even-numbered year (first
25 year being 2010) by June 30th, the new firm rates set by the CAGR D
26 for the next two years.
- 27 6. The CAGR D adjustor fees shall be calculated as follows: The total
28 CAGR D fees for the most current year in the Phoenix AMA shall be
divided by the gallons sold in that year to determine a CAGR D fee per
1,000 gallons. Similarly, the total CAGR D fees for the most current
year in the Pinal AMA shall be divided by the gallons sold in that year
to determine a CAGR D fee per 1,000 gallons.
7. By August 25th of each year, beginning in 2010, the Company shall
submit for Commission consideration its proposed CAGR D adjustor
fees for the Phoenix and Pinal AMAs, along with the calculations and

documentation from the relevant state agencies to support the data used in the calculations. Failure to provide such documentation to Staff shall result in the immediate cessation of the CAGR D adjustor fee. Commission-approved fees shall become effective on the following October 1st.

8. If the CAGR D changes its current method of assessing fees (i.e. based on the current volume of water used by customers) to some other method, such as, but not limited to, future projection of water usage, or total water allocated to the Company, the Company's collection from customers of CAGR D fees shall cease.
9. As a compliance item, the Company shall submit a new tariff reflecting the initial adjustor fee as per Condition No. 1 above and shall annually submit a new tariff reflecting the reset adjustor fee prior to the fee becoming effective.²⁴³

2. Company Arguments Against Conditions

The Company opposed or requested modification of Staff's recommended Condition Nos. 3, 4, 5, 7, and 8. Staff opposed the Company's requested modifications to Staff's recommended conditions.²⁴⁴

a. Condition No. 3

The Company stated that it is concerned that Condition No. 3 lacks sufficient flexibility to allow for changes in CAGR D's payment policies and other policies with regard to the use of CAGR D monies.²⁴⁵ The Company submitted that it should be permitted to withdraw funds from the CAGR D account as necessary to comply with the conditions of its membership in the CAGR D, as those conditions exist now or as they may be modified in the future.²⁴⁶

Staff stated that the Company's requested modification of Condition No. 3 should be disregarded, as the Company should not be allowed to spend funds in the CAGR D account for any

²⁴³ Staff Br. at 20-21, citing to Revised Surrebuttal Testimony of Jeffrey Michlik (Exh. S-43) at 4.

²⁴⁴ Staff Reply Br. at 21-23.

²⁴⁵ Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 20.

²⁴⁶ *Id.*

1 purpose other than the CAGR D expense item than has been analyzed in this proceeding and that the
 2 proposed adjustor is designed to recover.²⁴⁷

3 b. Condition No. 4

4 The Company argued that a single annual report, instead of the semi-annual report required
 5 by Condition No. 4, would be sufficient for Staff's verification of the accounting for CAGR D
 6 monies collected and remitted.²⁴⁸ Staff opposed the Company's requested modification of Condition
 7 No. 4 because Staff believes it is important for the Commission to have the ability closely monitor
 8 the Company's collection of CAGR D fees and the state of the CAGR D Account.²⁴⁹

9 c. Condition No. 5

10 The Company opposed Condition No. 5, arguing that the information it requires is publicly
 11 available and it would be more efficient for Staff to obtain the information directly from CAGR D.²⁵⁰

12 The Company also argued that compliance with regulatory conditions adds costs that are ultimately
 13 borne by the ratepayers and should only be imposed as necessary to achieve important regulatory
 14 objectives.²⁵¹

15 Staff opposed modification of Condition No. 5 because the rates established by the CAGR D
 16 involve calculations with many variables that may or may not be accessible or publicly available on
 17 the CAGR D's website now or in the future.²⁵² Staff stated that because the Company will be in
 18 possession of the information as part of its own record keeping and compliance requirements, it will
 19 therefore be in the best position to provide the Commission and Staff with the information.²⁵³ Staff
 20 indicated that as a result of this rate case, it lacks confidence in the Company's record keeping
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 23
 24

25 ²⁴⁷ Staff Br. at 21.

26 ²⁴⁸ Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 20.

27 ²⁴⁹ Staff Br. at 22.

28 ²⁵⁰ Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 20.

²⁵¹ *Id.* at 20-21.

²⁵² Staff Br. at 22.

²⁵³ *Id.*

1 abilities, and the submittal required by Condition No. 5 is necessary to confirm that the Company is
2 charging its customers the correct rates.²⁵⁴

3 d. Condition No. 7

4 The Company stated that it is not clear what consideration or approval the Commission
5 would exercise with regard to the assessment, and therefore opposes Condition No. 7.²⁵⁵ The
6 Company argued that this requirement is unnecessary as the CAGR D assessments are fixed by
7 CAGR D and are not subject to interpretation.²⁵⁶

8
9 Staff stated that Condition No. 7 is important because it allows the Company to receive the
10 required documentation first from CAGR D, and Staff and the Commission must have the ability to
11 review the calculations and documentation, including the CAGR D invoice.²⁵⁷ Staff stated that the
12 language "for Commission consideration" should not be changed because it is standard language that
13 allows the Commission to monitor and ultimately approve the exact adjustor fee charged to
14 customers.²⁵⁸ Staff stated that the Commission review and approval process each year would ensure
15 that the Company is submitting data to ADWR that is consistent with annual reports filed with the
16 Commission, that the Company is not misinterpreting the correct assessment rate, and that the
17 Company is calculating the customer fee correctly.²⁵⁹

18
19 e. Condition No. 8

20 The Company opposed Condition No. 8's requirement that the collection of fees cease should
21 the CAGR D change its current method of assessing fees.²⁶⁰ The Company argued that if the
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25 ²⁵⁴ Staff Reply Br. at 8.

26 ²⁵⁵ Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 21.

27 ²⁵⁶ *Id.*

28 ²⁵⁷ Staff Br. at 22; Tr. at 912.

²⁵⁸ Staff Br. at 22.

²⁵⁹ Staff Reply Br. at 8.

²⁶⁰ Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 21.

1 CAGRD changes its method of assessing fees, that Johnson would likewise change the way it passes
2 through the fee to its customers, consistent with the CAGRD changes.²⁶¹

3 Staff stated that Condition No. 8 should be retained because it is unlikely that CAGRD would
4 change the assessment methodology without notice, and if it were changed, the Company could
5 request a modification of the approved methodology.

6 3. RUCO Proposed Expense Adjustment and Opposition to Adjustor

7 RUCO asserted that the use of an adjustor mechanism is not a necessary or appropriate
8 means for the recovery of CAGRD expense.²⁶² RUCO argued that the circumstances of the CAGRD
9 assessment do not warrant an adjustor mechanism because it is a routine yearly expense and because
10 its progressive increase is not volatile.²⁶³ RUCO stated that rate stability is important in today's
11 economic environment, and because adjustors lead to changes in residential ratepayers' rates, they
12 should be approved only in extraordinary circumstances.²⁶⁴ RUCO also argued that oversight of
13 Staff's proposed adjustor would unnecessarily and inappropriately increase the Staff's workload.²⁶⁵

14 RUCO recommended that the CAGRD be treated as an expense, and proposed a
15 normalization adjustment to test year expenses based on the known and measurable costs of the
16 Company's CAGRD assessments through 2010.²⁶⁶ RUCO's proposed adjustment is based on the
17 Company's test year water sold and a 2009-2010 composite of Phoenix AMA and Pinal AMA
18 CAGRD fees per thousand gallons.²⁶⁷ RUCO asserted that because the Company has stated an
19 intention to file a new rate case every three years, RUCO's recommended adjustment would provide
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25 ²⁶¹ *Id.*

²⁶² RUCO Br. at 8-14; Reply Br. at 5.

²⁶³ RUCO Br. at 12-13.

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ RUCO Br. at 8; 14; Tr. at 205; Direct Testimony of RUCO witness Rodney Moore (Exh. R-1) at 16-17; RUCO
Final Schedules RLM 7 and RLM-16.

²⁶⁷ RUCO Final Schedule RLM-16.

1 the Company with complete recovery of the CAGR expense without requiring extraordinary
2 ratemaking treatment for a routine cost.²⁶⁸

3 In support of its recommendation that a CAGR adjustor mechanism be put in place for the
4 Company, Staff stated that the CAGR assessment represents a significant annual expense for the
5 Company, which is anticipated to progressively increase, and that in order to keep its membership in
6 the CAGR, the Company must pay the fee.²⁶⁹ Staff asserted that the CAGR assessment is
7 amenable to an adjustor mechanism because the assessment, unlike a pass-through tax, is not easily
8 calculated and assigned.²⁷⁰ Staff noted that the Commission has approved adjustor mechanisms
9 where appropriate in order to advance important policy concerns that protect the public interest.²⁷¹
10 Staff stated that the Commission has approved adjustors for expenses that are not extremely volatile
11 for Demand Side Management and the Renewable Energy Standards Tariff, based on a
12 determination that the advancement of energy conservation programs and the move to renewable
13 sources of energy were necessary policy considerations to advance the public interest.²⁷² Staff
14 opined that it would be appropriate, in the Commission's support of groundwater conservation, to
15 adopt the Staff's recommendation regarding an adjustor for the Company's CAGR assessment.
16
17

18 4. Conclusion

19 We agree with Staff that this Commission has in the past approved adjustor mechanisms
20 where appropriate to advance important policy concerns that protect the public interest. The
21 CAGR adjustor mechanism that Staff designed, inclusive of all eight conditions without
22 modification, appears to be a just and reasonable means of dealing with the costs of the CAGR.
23 Conservation and wise stewardship of increasingly stressed water supplies is a matter of paramount
24 concern in Arizona, and we believe that it is important to send appropriate signals to water
25

26 ²⁶⁸ RUCO Br. at 14.

27 ²⁶⁹ Staff Br. at 20, citing to Revised Surrebuttal Testimony of Jeffrey Michlik (Exh. S-43) at 1.

28 ²⁷⁰ *Id.*

²⁷¹ Staff Reply Br. at 7-8.

1 companies regarding their duty to fully engage in conservation programs administered by the
 2 ADWR. The CAGR assessment fee is not discretionary for Companies such as Johnson Utilities,
 3 and the Commission believes that the CAGR participation represents the kind of investment that is
 4 appropriate for timely cost recovery. To not allow the Company to recover its CAGR costs in real
 5 time may threaten the Company's ability to participate in the CAGR program and would send a
 6 negative signal to water providers regarding this Commission's support for sound regional
 7 approaches to achieving safe yield in Active Management Areas. While we are not satisfied with the
 8 Company's past accounting methodologies, and are supportive of the steps taken in this Order to
 9 require Johnson Utilities to come into compliance with NARUC accounting standards, we believe
 10 Staff's adjustor mechanism proposal will accord the Commission maximum oversight over the
 11 application of the adjustor mechanism. We will therefore approve the CAGR adjustor mechanism,
 12 inclusive of all eight conditions proposed by Staff.
 13

14 **B. Rate Case Expense**

15 The Company requested recovery of \$100,000 in rate case expense for each division.²⁷³
 16 There was no disagreement on the amount of expense. Staff recommended normalization of the
 17 expense over three years, and the Company agreed.²⁷⁴ RUCO recommended an amortization of five
 18 years to reflect the Company's propensity for not timely filing rate applications.²⁷⁵ The Company
 19 pointed out that RUCO's CAGR expense normalization assumed that the Company would be filing
 20 a rate case in three years.²⁷⁶ We find that the three year normalization period is appropriate, and will
 21 adopt it.
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26 ²⁷² *Id.*

27 ²⁷³ Rebuttal Testimony of Company witness Thomas Bourassa (Exh. A-2) Vol. II at 23.

28 ²⁷⁴ *Id.*

²⁷⁵ RUCO Br. at 7.

1 **C. Income Tax Expense**

2 The Company is seeking recovery of income tax expense in the amount of \$1,185,679. As
3 an LLC, the Company does not pay taxes at the corporate level.²⁷⁷ Instead, its taxes are passed
4 through to the owners of the Company and accounted for when its member owners file their tax
5 returns. The Company reimburses its member owners for their tax liabilities.²⁷⁸ The Company
6 argued that because the income tax liability of its members “arises from the taxable income of
7 Johnson and it is directly attributable to Johnson Utilities” that the Company should be allowed to
8 collect the expense from ratepayers.²⁷⁹

9 The Company disagreed with the recommendations of RUCO and Staff to reject the
10 Company’s request to recover income tax expense. Johnson argued that denying recovery in rates of
11 the members’ pass through income tax liability results in inequities because Johnson will have a
12 lower revenue requirement than a C-Corp, and ratepayers will “receive an unjustified windfall from
13 the lower revenue requirement and operating income when income taxes are excluded.”²⁸⁰

14 Staff and RUCO both asserted that the Company voluntarily chose to organize as an LLC,
15 which is a pass through entity for purposes of income tax liability.²⁸¹ Staff argued that it would be
16 unfair to award the Company an expense it does not pay.²⁸² RUCO emphasized that the Company’s
17 chosen corporate organization confers a tax benefit on its shareholder members not enjoyed by “C”
18 corporation shareholders.²⁸³ RUCO stated that while a “C” corporation must pay income taxes prior
19 to the distribution of any profits to its shareholders as LLC shareholders, the tax liability of an LLC’s
20 shareholder members passes directly to the shareholders, such that they avoid double taxation.²⁸⁴

24 ²⁷⁶ Co. Br. at 31.

25 ²⁷⁷ Tr. at 9.

26 ²⁷⁸ Rebuttal Testimony of Company witness Thomas Bourassa (Exh. A-2) Vol. III at 28.

27 ²⁷⁹ Co. Br. at 32, citing to Rebuttal Testimony of Company witness Thomas Bourassa (Exh. A-2) Vol. II at 23.

28 ²⁸⁰ *Id.*

²⁸¹ RUCO Br. at 7; Staff Reply Br. at 9.

²⁸² Staff Br. at 19.

²⁸³ RUCO Reply Br. at 7.

²⁸⁴ RUCO Br. at 7.

1 Regarding the agreement between the Company and its members for the Company to reimburse their
 2 personal tax liability, as testified to by the Company's witness,²⁸⁵ Staff argued that the ratepayers are
 3 not a party to the agreement,²⁸⁶ and RUCO argued that just like the Company's corporate status
 4 election, the Company's election to reimburse its shareholders' tax liability is voluntary.²⁸⁷

5 The Company argued that its tax situation is analogous to a subsidiary of a "C" corporation
 6 utility of a parent holding company whose tax return is consolidated with the parent.²⁸⁸ Staff and
 7 RUCO both disagreed. RUCO stated that the Company's situation is not analogous, because the
 8 Company is not a subsidiary of a parent company that files a consolidated return.²⁸⁹ Staff stated that
 9 the Company's tax status is distinguishable from the case of a subsidiary "C" corporation utility of a
 10 parent holding company whose tax return is consolidated with the parent, because in that case, there
 11 is evidence of the tax rate, but in this case, there is no such evidence.²⁹⁰ Staff argued that the
 12 Company provided no evidence regarding the tax rates of its members or that its members even paid
 13 any taxes.²⁹¹

14 Johnson cited to several cases in which pass through taxes have been allowed rate
 15 recovery,²⁹² but acknowledged that state Commissions vary as to whether income taxes for pass-
 16 through entities are allowed in cost of service.²⁹³ Johnson argued that inclusion or exclusion of
 17 income tax expense should not be affected by technical distinctions, but that the appropriate inquiry
 18 should consider whether the outcome is fair and non-discriminatory.²⁹⁴ We agree that the tax
 19 liability issue should receive fair and non-discriminatory ratemaking treatment, but disagree with the
 20 Company that its chosen organizational form is a "technical distinction." As RUCO and Staff argue,
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24 ²⁸⁵ Tr. at 1352.

25 ²⁸⁶ Staff Reply Br. at 9.

26 ²⁸⁷ RUCO Br. at 7.

27 ²⁸⁸ Co. Br. at 32, citing to Rebuttal Testimony of Company witness Thomas Bourassa (Exh. A-2) Vol. II at 24.

28 ²⁸⁹ RUCO Br. at 7-8.

²⁹⁰ Staff Reply Br. at 9.

²⁹¹ *Id.*

²⁹² Co. Br. at 34-36.

²⁹³ Co. Br. at 33.

the Company freely chose to be organized as an LLC, and we must assume that its choice was an informed choice that imparts certain advantages to the Company. We do not share the Company's view that inclusion of the Company's members' pass-through tax liability in customers' rates would lead to a fair, equitable, and non-discriminatory result. As we determined in Decision No. 71445 (December 23, 2009), it is not appropriate or in the public interest to allow pass through entities such as the Company to recover income tax expenses through rates.²⁹⁵ The Company's request is not reasonable and will be denied.

D. Operating Income Summary

Based on the discussion of operating income issues set forth above, we find the adjusted test year operating expenses and operating income for its water and wastewater divisions to be as follows:

	Water Division	Wastewater Division
Adjusted test year revenues	\$13,172,899	\$11,354,014
Test year operating expenses	\$9,553,304	\$9,432,270
Test year operating income	\$3,619,595	\$1,921,744

V. COST OF CAPITAL/OPERATING MARGIN

A. Company's Position

The Company recommended that its proposed weighted average cost of capital ("WACC") of 11.89 percent be used as the Company's rate of return to be applied to its proposed fair value rate base ("FVRB") to compute the Company's required operating income.²⁹⁶

The Company proposed a cost of equity of 12.0 percent.²⁹⁷ The Company's witness Thomas Bourassa reached this recommendation based on his discounted cash flow ("DCF") and capital asset pricing model ("CAPM") results using data from a sample of six water utilities selected from the

²⁹⁴ Co. Br. at 32-33; Co. Reply Br. at 27.

²⁹⁵ Decision No. 71445 at 29-37.

²⁹⁶ Rebuttal Testimony of Company witness Thomas Bourassa (Exh. A-2) Vol. I at 3.

²⁹⁷ *Id.*

Value Line Investment Survey.²⁹⁸ The Company's proposed cost of debt is 8.0 percent.²⁹⁹ The Company used its actual capital structure to calculate its proposed WACC, and disagreed with RUCO's proposed hypothetical capital structure of 40 percent debt and 60 percent equity.³⁰⁰ The Company stated that at the end of the test year, the Company had adjusted total capital of \$25,897,122, consisting of \$722,000 long term debt and \$25,175,122 common equity, for a capital structure of 2.8 percent debt and 97.2 percent common equity.³⁰¹

B. RUCO's Position

RUCO recommended that its proposed WACC of 8.18 percent be applied to rate base to determine the required operating income for the Company's wastewater division.³⁰² RUCO's recommended cost of equity for the Company's wastewater division is 8.31 percent, and is based on the analysis of its witness William Rigsby. Mr. Rigsby used the average of his CAPM and DCF model results to reach his cost of equity estimate.³⁰³ Like the Company, RUCO recommended a cost of debt of 8.0 percent based on the Company's existing debt cost.³⁰⁴ RUCO stated that because the Company's actual capital structure consists of almost all equity, it used a hypothetical capital structure of 40 percent long term debt and 60 percent common equity to calculate its proposed WACC.³⁰⁵

For the Company's water division, RUCO recommended a negative rate base, and proposed an operating margin of 8.18 percent to determine its recommended revenue requirement for the water division.³⁰⁶

²⁹⁸ Direct Testimony of Company witness Thomas Bourrassa (Exh. A-1) Exhibit F at 4.

²⁹⁹ Rebuttal Testimony of Company witness Thomas Bourrassa (Exh. A-2) Vol. I at 3.

³⁰⁰ Co. Br. at 47.

³⁰¹ Direct Testimony of Company witness Thomas Bourrassa (Exh. A-1) Exhibit F at 2; Rebuttal Testimony of Company witness Thomas Bourrassa (Exh. A-2) Vol. I at 3.

³⁰² Direct Testimony of RUCO witness William Rigsby (Exh. R-9) at 5.

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ RUCO Br. at 15.

C. Staff's Position

Staff did not present a cost of capital analysis or recommendation for the Company. Due to the size of the rate base for the wastewater division and the negative rate base for the water division, Staff recommended that an operating margin should be used to determine both revenue requirements. Staff recommended that an operating margin of 10 percent be used in order to determine a revenue requirement for both the water and wastewater divisions.³⁰⁷

D. Conclusion

The Company's FVRB for its water division is negative and the FVRB for its wastewater division is \$136,562. Due to the size of the rate bases for the Company's two divisions, there is insufficient investment upon which to grant the Company a return. Authorizing an operating margin for a utility the size of the Company is problematic.³⁰⁸ Any part of an operating margin that is not used to cover legitimate utility expenses would accrue to the utility as income. Allowing a utility to collect an operating margin in rates has the potential to allow the utility to accrue a net income similar to the return earned by a utility that has made an investment in plant. In other words, authorizing an operating margin when there is no rate base investment has the potential of allowing the utility to realize a profit without making any investment, creating a windfall for the utility, without the utility having put any capital at risk.

We do not wish to reward the Company for having a negative or negligible rate base. However, neither do we wish to have the Company's customers placed in jeopardy as they might be if the Company is unable to meet its legitimate operating expenses. We believe that an operating margin of 10 percent is too generous and would be a windfall for the Company and result in unreasonably higher rates for its customers. On the other hand, no allowance for an operating

³⁰⁶ Direct Testimony of RUCO witness William Rigsby (Exh. R-9) at 3.

³⁰⁷ Staff Br. at 19; Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 31 and (Exh. S-44) at 29.

³⁰⁸ In the absence of a FVRB, the Arizona Constitution does not require the Commission to authorize rates to allow the Company to collect any revenue in addition to its operating expenses.

1 margin (a margin set to zero) would reduce cash flow for contingencies, and could place the
2 Company's customers in harm's way. Accordingly, in weighing the interests of the Company and
3 its customers we consider the range of possible operating margins between 10 percent and zero that
4 could be authorized based upon this record. In our consideration, we also note the absence of
5 existing equity investment by the Company.

6 In light of these factors and the record, we believe something less than a midpoint within the
7 range is warranted when balancing the interests of the Company and its customers, and find that an
8 operating margin of 3 percent for both its water and wastewater divisions is reasonable. Therefore,
9 we determine a 3 percent operating margin for the water and wastewater divisions is appropriate and
10 in the public interest. The operating margin will allow the Company to meet its legitimate operating
11 expenses while it works to build its equity investment.

12 The issue of whether an operating margin remains suitable, and whether the size of the
13 operating margin is appropriate for a Class A Utility, will be re-evaluated in the Company's next rate
14 filing.
15

16 VI. AUTHORIZED INCREASE/DECREASE

17 A. Water Division

18 The adjusted test year operating income for the water division was \$3,619,595. A 3 percent
19 operating margin for the Company's water division results in operating income of \$293,218. Based
20 on our findings herein, we determine that the Company's gross revenue for its water division should
21 decrease by \$3,398,960.
22

23 B. Wastewater Division

24 The adjusted test year operating income for the wastewater division was \$1,921,744. A 3
25 percent operating margin for the Company's wastewater division results in operating income of
26
27
28

1 \$290,610. Based on our findings herein, we determine that the revenues for the Company's
2 wastewater division should decrease by \$1,667,019.

3 VII. RATE DESIGN

4 Staff recommended an inverted three-tiered rate design for the Company's 3/4 and 5/8 inch
5 meter residential water customers and an inverted two-tiered rate design for all other water
6 customers.³⁰⁹ For wastewater customers, Staff recommended a single monthly minimum charge
7 based on meter size for all zones and classes of customers.³¹⁰ There was no dispute regarding rate
8 design. Staff's recommendations regarding rate design are reasonable and will be adopted.
9

10 VIII. OTHER ISSUES

11 A. Discontinuance of Hook-Up Fees

12 Staff recommended that the Company's HUF tariffs be discontinued, due to the fact that
13 there is comparatively little equity in the Company's capital structure.³¹¹ Staff stated that according
14 to the independent auditor's report, at the end of 2006, the percentage of members' capital in the
15 Company was 9.65 percent.³¹² Staff noted that while it is supportive of the use of HUFs, there
16 should be a balance between the amount of equity the Company is investing in plant and what
17 customers are investing in plant through HUFs.³¹³ For a utility the size of Johnson, Staff
18 recommends an equity range of between 40 to 60 percent and debt between 40 to 60 percent, and in
19 addition, that no more than 30 percent equity should be from AIAC and CIAC.³¹⁴ Staff further
20 recommended that in the future, if the Company wishes to apply for a HUF tariff, that it have a
21 Certified Public Accounting firm attest to the Company's membership equity level of 40 percent.³¹⁵
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24

25 ³⁰⁹ Staff Final Schedule JMM-W26.

26 ³¹⁰ Staff Final Schedule JMM-WW24.

27 ³¹¹ Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 35.

28 ³¹² Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 34-35 and (Exh. S-44) at 32-34.

³¹³ Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 34-35 and (Exh. S-44) at 32-34.

³¹⁴ *Id.*

³¹⁵ Surrebuttal Testimony of Staff witness Jeffrey Michlik (Exh. S-39) at 15 and (Exh. S-45) at 17.

1 The Company opposed Staff's recommendation. The Company argued that in the coming
2 years it will fund plant capacities with equity, and that the \$6,931,078 balance in the water HUF
3 account at the end of the test year was collected on developments where construction has stopped
4 due to current market conditions.³¹⁶ The Company also argued that in 2006, the Company was
5 informed that a Staff audit had not disclosed anything unusual or improper regarding the way the
6 Company was collecting, using and accounting for HUFs.³¹⁷

7
8 We agree with Staff that under the circumstances of this case, in the interest of attaining a
9 balance for the Company between equity investment in plant and customer contributions to plant, it
10 is reasonable and in the public interest to discontinue the Company's authority to collect HUFs for
11 both its water and wastewater divisions. We further find it reasonable and in the public interest to
12 require, as a prerequisite to approval of a new hook up fee tariff for the Company in the future, that
13 the Company provide certification by a Certified Public Accounting firm that the Company has a
14 membership equity level of at least 40 percent.

15
16 **B. Water Loss for Johnson Ranch System**

17 Staff recommended that the Company be ordered to conduct a twelve month water loss
18 monitoring exercise for the Johnson Ranch water system including monitoring and reporting water
19 gallons sold, gallons pumped, and gallons purchased per month.³¹⁸ The information the Company
20 initially provided to Staff showed that this system's 2007 water loss was 19.4 percent.³¹⁹ The
21 Company subsequently indicated that the number of gallons sold that it initially reported was
22 inaccurate because it did not include construction water and irrigation water sales.³²⁰ Staff further
23 recommended that the Company docket the results of the system monitoring as a compliance item in
24

25 ³¹⁶ Co. Reply Br. at 59, citing to Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 31.

26 ³¹⁷ Co. Reply Br. at 59, citing to Rejoinder Testimony of Company witness Brian Tompsett (Exh. A-7) at 7.

27 ³¹⁸ Tr. 1425-1426; Direct Testimony of Staff witness Marlin Scott, Jr. (Exh. S-36) Exhibit MSJ at 8-9; Tr. at 1419; Reply
28 Br. at 24.

³¹⁹ Staff Br. at 23, citing to Direct Testimony of Staff witness Marlin Scott, Jr. (Exh. S-36) at 8, Surrebuttal Testimony of
Staff witness Marlin Scott, Jr. (Exh. S-37) at 6, and Tr. at 1456.

1 this case. Staff recommended that if the reported water loss for a one year period is greater than 10
 2 percent, the Company be required to prepare a report containing detailed analysis and plan to reduce
 3 water loss to 10 percent or less. Staff recommended that if the Company believes it is not cost
 4 effective to reduce water loss to less than 10 percent, it should submit a detailed cost benefit analysis
 5 to support its opinion. Staff recommended that such report be docketed as a compliance item for this
 6 proceeding for review and certification by Staff. Staff recommended that in no case should water
 7 loss be greater than 15 percent, and that Staff be authorized to initiate an Order to Show Cause
 8 against the Company if water loss is not reduced to less than 15 percent.³²¹

10 The Company argued that the actual percentage of non-account water for the Johnson Ranch
 11 system for 2007 was under 10 percent, and that it addressed the issue in its 2008 water use data sheet
 12 submitted with its 2008 annual report.³²² Staff responded that because the Company did not provide
 13 sufficient support for its claim, including a breakdown of the gallons sold per month, that Staff's
 14 recommendation remains the same following the Company's submission of the 2008 water use data
 15 sheet.³²³ Staff's recommendations are reasonable and will be adopted.

17 C. ADEQ Compliance

18 Swing First presented evidence in this proceeding concerning fourteen Notices of Violation
 19 ("NOVs") issued to the Company by ADEQ, dating back to September 2004.³²⁴ Five of the NOVs
 20 were issued in 2008 and two were issued in 2009.³²⁵ Some of the NOVs remain open.³²⁶

21 Staff recommended that any increases in rates and charges authorized in this matter not go
 22 into effect until the Company comes into full compliance with ADEQ by resolving all outstanding
 23 NOVs including, but not limited to, the outstanding NOV associated with the Pecan, San Tan, and
 24

25 ³²⁰ Surrebuttal Testimony of Staff witness Marlin Scott, Jr. (Exh. S-37) at 6.

26 ³²¹ Direct Testimony of Staff witness Marlin Scott, Jr. (Exh. S-36) at 8-9; Tr. at 1419.

27 ³²² Co. Br. at 60, citing to Rebuttal Testimony of Company witness Brian Tompsett (Exh. A-5) at 32 and Rejoinder
 Testimony of Company witness Brian Tompsett (Exh. A-7) at 15.

28 ³²³ Staff Br. at 24, citing to Tr. at 1457 and Surrebuttal Testimony of Staff witness Marlin Scott, Jr. (Exh. S-37) at 7.

³²⁴ RUCO Br. at 22, citing to Exh. SF-9.

1 Section 11 Wastewater Treatment plants.³²⁷ Staff recommended, however, that if rate decreases are
 2 authorized, as recommended by Staff, that such decreases should not be postponed until the
 3 Company comes into full compliance with ADEQ.³²⁸

4 RUCO stated that it is very concerned about the public's health and safety and the
 5 Company's attitude toward the subject, and believes it is necessary for the Commission to take
 6 action to assure the public's safety.³²⁹ RUCO recommended that the Company be required to
 7 provide the Commission twice a month or monthly confirmation that it is in compliance with all
 8 rules and regulations of ADEQ and notice of any new alleged violations whether written or oral.³³⁰

9 RUCO recommended that its proposed filing include all correspondence, oral and written, that the
 10 Company has with ADEQ during the time period.³³¹ RUCO recommended that the Company be
 11 ordered to report any leaks, overflows or any other incidents no matter how minor to the
 12 Commission immediately after they occur.³³² Finally, RUCO recommended that the Commission
 13 should, resources permitting, put into place both scheduled and unannounced visits by its Staff to the
 14 Company's service area for the purpose of on-site inspections, and require Staff to file with the
 15 Commission, with copies to the parties, reports of any inspection made.³³³ RUCO recommended
 16 that its proposed requirements remain in place for a minimum of six months but not be removed
 17 until the Company can prove that all open NOV's are closed.³³⁴

18 Staff stated that it shares the concerns of RUCO, but that it does not have the resources
 19 available to commit to additional inspections of Johnson's facilities.³³⁵ Staff noted that it receives

20
 21
 22
 23 ³²⁵ *Id.*

24 ³²⁶ RUCO Br. at 22, citing to Tr. at 85-117.

25 ³²⁷ Tr. at 1430.

26 ³²⁸ Tr. at 1520-21.

27 ³²⁹ RUCO Br. at 29.

28 ³³⁰ *Id.*

³³¹ *Id.*

³³² *Id.*

³³³ *Id.* at 29-30.

³³⁴ RUCO Br. at 30.

³³⁵ Staff Reply Br. at 12.

1 notification from the Company when spills occur, and that any additional inspection and reporting
2 requirements would be duplicative of the work performed by ADEQ.³³⁶

3 We agree with Staff and RUCO that the evidence presented in this case regarding both the
4 quantity of NOVs and the nature and character of the NOVs, especially the NOV designated by
5 ADEQ as Case ID #103357 involving the Company's Section 11 WWTP, are cause for concern. As
6 RUCO argued, if the Commission finds, based on the preponderance of the evidence, that the
7 Company's manner of providing service jeopardizes the public's safety and health, this
8 Commission's remedies cannot be punitive as might be the case with ADEQ, but rather must focus
9 on remedying the situation.³³⁷ The evidence presented this proceeding regarding the NOVs issued
10 by ADEQ is of great concern to this Commission. However, the evidence was not first-hand
11 investigative evidence such as would be required for a Commission finding by the preponderance of
12 the evidence, as urged by RUCO in its closing brief, that the Company's operations are jeopardizing
13 the public's safety and health. ADEQ is the state agency in Arizona charged with the responsibility
14 to, and provided with the resources and expertise required to, investigate and prosecute entities who
15 violate Arizona's environmental laws. The evidence elicited by Swing First was of the nature of
16 reporting on the investigative and enforcement activities of ADEQ. We are in agreement with
17 RUCO that the roles of ADEQ and the Commission should not be duplicative,³³⁸ but unlike RUCO,
18 we believe that implementing RUCO's recommendations would lead to just such a result.
19
20
21

22 Staff's recommendation to require that any increases in rates and charges authorized in this
23 matter not go into effect until the Company comes into full compliance with ADEQ by resolving all
24 outstanding NOVs including, but not limited to, the outstanding NOV associated with the Pecan, San
25 Tan, and Section 11 Wastewater Treatment plants is reasonable. However, the rates approved herein
26 constitute a rate reduction for the Company's water and wastewater divisions. We will require
27

28 ³³⁶ *Id.*

³³⁷ See RUCO Br. at 23.

1 instead that the Company file, within 30 days, a list of outstanding NOV's issued against it by
2 ADEQ, and to list (1) the procedural status of each NOV; and (2) steps the Company is taking to
3 come into compliance with ADEQ requirements. We will also require the Company to notify the
4 Commission at such time that the Company comes into full compliance with all ADEQ
5 requirements, including resolving all outstanding NOV's. We will require that Staff, within 60 days
6 of receipt of such filing, review the filing, verify the Company's compliance, and file a status report
7 in this docket indicating that the Company has come into full compliance with all ADEQ
8 requirements.
9

10 **D. Swing First Golf's Recommendations**

11 Swing First, a customer of Johnson, owns and operates The Golf Club at Johnson Ranch. On
12 January 25, 2008, Swing First filed a complaint against Johnson in Docket No. WS-02987A-08-0049
13 ("Complaint Docket"). The Complaint Case is currently pending.
14

15 Swing First's witness Sonn Rowell made nine recommendations in her testimony, as follows:

- 16 1. Utility should not be allowed to increase its rates until its
17 management and financial practices are investigated.
- 18 2. Utility should be required to immediately reduce its water rates and
19 make refunds.
- 20 3. The Company should be required to refund – in cash, not credits – its
21 illegal superfund tax collections.
- 22 4. Utility's Pecan Wastewater Treatment Plant should not be included in
23 rate base.
- 24 5. Utility should be required to dismiss all pending defamation lawsuits
25 against its customers, and pay all of their court costs and legal fees.
- 26 6. Utility should be fined for its blatant disregard of its public service
27 obligations, environmental laws, and explicit commission orders.
- 28 7. Utility should be penalized with a reduced rate of return on equity.

338 See id.

1 8. Following the completion of the independent management and
2 financial audits, the Commission should require Utility to
3 demonstrate why it should not surrender its certificate of convenience
4 and necessity.

5 9. The Commission should bifurcate this case into two phases.³³⁹

6 The Company responded to Swing First's recommendations in its closing brief. In its reply
7 brief, the Company responded to arguments Swing First made on brief in support of its
8 recommendations.³⁴⁰

9 Staff stated that it does not support the recommendations made by Swing First in this
10 docket,³⁴¹ and noted that a number of actions Swing First recommended are beyond the
11 constitutional and statutory authority of the Commission to implement.³⁴² Staff stated that the
12 Company has been charging rates authorized in Decision No. 60223, and thus has charged its
13 customers rates that were deemed just and reasonable, until further determination by the
14 Commission.³⁴³ Staff stated that to require the Company to refund its customers from 2007 forward,
15 as recommended by Swing First, raises issues of retroactive ratemaking, and that generally, the rule
16 against retroactive ratemaking prohibits the retroactive adjustment of rates to account for unexpected
17 expenses or revenues.³⁴⁴ Staff also commented that the Commission does not have authority to order
18 the Company to dismiss all pending defamation lawsuits against its customers and to pay all of their
19 court costs and legal fees.³⁴⁵ Staff noted, however, that Swing First's intervention in this matter
20 helped bring to Staff's attention certain irregular billing practices and other customer service
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22
23
24

25 ³³⁹ Direct Testimony of Swing First witness Sonn Rowell (Exh. SF-40) at 15.

26 ³⁴⁰ Co. Reply Br. at 30-46.

27 ³⁴¹ Staff Br. at 24.

28 ³⁴² Staff Reply Br. at 12.

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.*

1 issues.³⁴⁶ Staff stated that because it was made aware of the Company's practice of under-billing
 2 Oasis Golf Course, Staff was able to make an adjustment to correct it.³⁴⁷

3 Staff recommended that the remaining customer service issues that Swing First has alleged
 4 be adjudicated and resolved in the pending Complaint Case.³⁴⁸ RUCO stated that it believes Swing
 5 First's billing dispute would be better addressed in the Complaint Docket.³⁴⁹ The Company agreed
 6 that the appropriate forum for the billing dispute is the Complaint Docket.³⁵⁰

7 We agree with RUCO, the Company, and Staff that the customer service and billing issues
 8 raised by Swing First in this docket are best addressed in the pending Complaint Docket. We further
 9 agree with Staff that it would not be appropriate to adopt Swing First's other recommendations in
 10 this proceeding.

11 * * * * *

12 Having considered the entire record herein and being fully advised in the premises, the
 13 Commission finds, concludes, and orders that:

14 FINDINGS OF FACT

15 1. On March 31, 2008, Johnson filed a rate increase application for water and
 16 wastewater with a 2007 test year.

17 2. Johnson is a public service corporation that provides water and wastewater service in
 18 Pinal County, Arizona pursuant to a CC&N originally granted in Decision No. 60223 (May 2,
 19 1997), which authorized its current rates and charges. Johnson is organized as an Arizona limited
 20 liability company and is in good standing. Its principal place of business is 5230 East Shea Blvd.,
 21 Suite 200, Scottsdale, Arizona 85254.

22 3. In Decision Nos. 68235 (October 25, 2005), 68236 (October 25, 2005), and 68237
 23 (October 25, 2005), Johnson was ordered to file a rate application for both water and wastewater by
 24 May 1, 2007, based on a 2006 test year. Prior to May 1, 2007, Johnson filed a request to extend
 25

26 ³⁴⁶ Staff Br. at 24, citing to (Exh. SF-40) at 9, Tr. at 584-590, and (Exh. A-6) at 16.

27 ³⁴⁷ Staff Br. at 24-25, citing to (Exh. SF-38) at 15, and Tr. at 473 and 1704.

28 ³⁴⁸ Staff Br. at 25.

³⁴⁹ RUCO Reply Br. at 10.

³⁵⁰ Co. Reply Br. at 46.

1 that filing date. On September 18, 2007, Staff recommended that the Company be required to file
2 the rate application by March 31, 2008, using a 2007 test year.

3 4. On April 29, 2008, Staff filed a Letter of Deficiency stating that the rate application
4 did not meet the sufficiency requirements as outlined in A.A.C. R14-2-103, and listing the items
5 Staff required to deem the application sufficient for processing.

6 5. On May 13, 2008, existing Counsel for the Company filed a Motion Requesting
7 Permission to Withdraw as Counsel, and new Counsel for the Company filed a Notice of
8 Substitution of Counsel.

9 6. On May 14, 2008, the Company filed revised schedules and other documents to
10 address the items identified in Staff's April 29, 2008, Letter of Deficiency.

11 7. On May 16, 2008, a Procedural Order was issued granting the May 13, 2008, Motion
12 Requesting Permission to Withdraw as Counsel.

13 8. On June 11, 2008, a letter from Commissioner Mundell to the Commission was
14 docketed.

15 9. On June 11, 2008, Swing First filed a Motion to Intervene. By Procedural Order
16 issued June 23, 2008, Swing First's Motion to Intervene was granted.

17 10. On June 13, 2008, Staff filed a Second Letter of Deficiency.

18 11. On June 23, 2008, a letter from Commissioner Mundell to the Company was
19 docketed, indicating that Commissioner Mundell docketed all the material that Johnson provided to
20 the Commissioners regarding the sanitary sewer overflows from the Pecan WWTP during the
21 weekend of May 17-18, 2008.

22 12. On June 24, 2008, a letter from Commissioner Mundell to the Commission was
23 docketed.

24 13. On July 3, 2008, Johnson filed responses to the data requests contained in Staff's
25 Second Letter of Deficiency.

26 14. On August 1, 2008, Staff filed a Letter of Sufficiency informing the Company that the
27 application had met the Commission's sufficiency requirements and classifying the Company as a
28 Class A utility.

1 15. On August 15, 2008, a Rate Case Procedural Order was issued setting a hearing on
2 the rate application to commence on April 23, 2009, and setting associated procedural deadlines,
3 including public notice requirements.

4 16. On September 25, 2008, Johnson filed a Motion to Revise Procedural Schedule.

5 17. On November 21, 2008, Swing First filed a Motion to Compel.

6 18. On November 25, 2008, Johnson filed a Request for Extension of Time to Respond to
7 Motion to Compel.

8 19. On December 2, 2008, Johnson filed a Notice of Filing Affidavit of Publication.

9 20. A total of 159 public comments concerning the rate application were filed in this
10 docket.

11 21. On December 2, 2008, Johnson filed a Response to Swing First's Motion to Compel.

12 22. On December 4, 2008, RUCO filed an Application to Intervene. RUCO was granted
13 intervention by Procedural Order issued December 16, 2008.

14 23. On December 5, 2008, Swing First filed a Reply to Johnson's Response to Motion to
15 Compel.

16 24. On December 17, 2008, Florence filed a Motion for Leave to Intervene. Florence
17 was granted intervention by Procedural Order issued December 31, 2008.

18 25. On December 17, 2008, Staff filed a copy of a letter to the Company indicating
19 Staff's concerns with late or incomplete Company responses to Staff's data requests. The letter
20 stated that "Staff must now insist that the Company file all responses to all outstanding and current
21 data requests by January 8, 2009. Staff will make adjustments according to the information
22 received as of January 8, 2009. Staff reserves the right to disregard any responses to current and
23 outstanding data requests received after January 8, 2009. Staff further reserves the right to issue
24 more data requests as needed." The letter included a listing of all data requests to which Staff stated
25 Company responses were incomplete.

26 26. On January 21, 2009, a Procedural Order was issued setting a Procedural Conference
27 for January 27, 2009, for the purpose of allowing the parties to present their arguments regarding
28 Swing First's Motion to Compel Discovery.

1 27. On January 27, 2009, the Procedural Conference was held as scheduled. Swing First
2 and Johnson presented their arguments regarding Swing First's Motion to Compel, and during the
3 Procedural Conference, Johnson was directed to provide some of the requested information to
4 Swing First.

5 28. On January 29, 2009, Florence filed a Motion for Extension of Time to File
6 Testimony.

7 29. On February 3, 2009, Staff filed a Response to Florence's Motion for Extension of
8 Time to File Testimony.

9 30. On February 3, 2009, Swing First filed direct testimony of David Ashton.

10 31. On February 4, 2009, RUCO filed direct testimony of William A. Rigsby and Rodney
11 L. Moore.

12 32. On February 4, 2009, Staff filed direct testimony of Jeffrey M. Michlik and Marlin
13 Scott, Jr.

14 33. On February 5, 2009, a Procedural Order was issued extending the deadline for
15 Florence to file its direct testimony to February 17, 2009.

16 34. On February 6, 2009, Swing First filed a Motion for Date Certain requesting that a
17 date and time certain be set for the testimony of its witness David Ashton.

18 35. On February 17, 2009, a Procedural Order was issued scheduling Mr. Ashton to
19 appear on April 17, 2009, at 9:30 a.m. to testify.

20 36. On February 17, 2009, Swing First filed its Motion for Leave to File Supplemental
21 Direct Testimony and Emergency Motion to Prohibit Inappropriate Contact.

22 37. On February 19, 2009, a Procedural Order was issued ordering Johnson to file, by
23 February 24, 2009, a response to Swing First's Emergency Motion to Prohibit Inappropriate
24 Contact, and setting a Procedural Conference for February 26, 2009 for the purpose of allowing the
25 parties to present their arguments regarding Swing First's Emergency Motion to Prohibit
26 Inappropriate Contact.

27 38. On February 19, 2009, Johnson made two filings: a Motion to Strike Pre-Filed Direct
28 Testimony of David Ashton on Behalf of Intervenor Swing First Golf and Response to Swing First

1 Golf's Motion for Leave to File Supplemental Direct Testimony, and a Motion to Compel
2 Discovery.

3 39. On February 20, 2009, a Procedural Order was issued stating that the Procedural
4 Conference set for February 26, 2009 would be expanded to allow the parties to address all
5 outstanding motions and responses.

6 40. On February 20, 2009, Johnson filed a Notice of Inappropriate Discovery and
7 Litigation Tactics.

8 41. On February 24, 2009, Johnson filed its Response to Emergency Motion to Prohibit
9 Inappropriate Contact.

10 42. On February 25, 2009, Swing First filed its Response to Johnson's Motion to Compel.

11 43. On February 25, 2009, Swing First filed its Notice of Partial Witness Substitution;
12 Response to Johnson's Motion to Strike; and Reply to Johnson's Response to Swing First's Motion
13 for Leave to File Supplemental Direct Testimony.

14 44. On February 26, 2009, Johnson filed its Response and Motion to Strike Intervenor
15 Swing First's Notice of Inappropriate Discovery and Litigation Tactics.

16 45. On February 26, 2009, a Procedural Conference was held as scheduled.

17 46. On February 27, 2009, Johnson filed its Request Regarding Deadline for Filing
18 Rebuttal Testimony to Swing First's Direct Testimony.

19 47. On March 2, 2009, Swing First filed its revised direct testimonies of Swing First
20 witnesses David Ashton and Sonn S. Rowell.

21 48. On March 5, 2009, a Procedural Order was issued granting Johnson's request for an
22 extension of time, to March 23, 2009, to file rebuttal to the revised direct testimonies of Swing First
23 witnesses David Ashton and Sonn S. Rowell.

24 49. On March 5, 2009, Johnson filed a Motion for Extension of Time to File Rebuttal
25 Testimony.

26 50. On March 10, 2009, Johnson filed rebuttal testimony of Thomas J. Bourassa
27 (Volumes I, II, and III) and Brian Tompsett.

28 51. On March 23, 2009, Johnson filed supplemental rebuttal testimony of Brian

1 Tompsett.

2 52. On March 24, 2009, Johnson filed supplemental rebuttal testimony of Thomas J.
3 Bourassa.

4 53. On March 31, 2009, RUCO filed surrebuttal testimony of William A. Rigsby and
5 Rodney L. Moore.

6 54. On March 31, 2009, Staff filed surrebuttal testimony of Jeffrey M. Michlik and
7 Marlin Scott Jr.

8 55. On April 15, 2009, Staff filed a Motion to Compel. Staff requested an order directing
9 that Johnson and/or Florence be directed to immediately make arrangements for Staff's review of
10 the workpapers associated with an audit previously provided to Staff by Johnson in response to a
11 Data Request. A copy of the audit was attached to the Motion as an exhibit.

12 56. On April 16, 2009, a Procedural Order was issued directing Johnson and Florence to
13 be prepared to discuss Staff's Motion to Compel at the prehearing conference, if they had not, by
14 the time the scheduled prehearing conference commenced, made the arrangements requested by
15 Staff for its review of the workpapers associated with the Henry and Horne, LLP audit dated June
16 26, 2007, that had previously been provided to Staff.

17 57. On April 20, 2009, the prehearing conference was held as scheduled. At the
18 prehearing conference, Staff withdrew its Motion to Compel.

19 58. On April 17, 2009, Johnson filed the rejoinder testimony of Thomas J. Bourassa
20 (Volumes I, II and III) and Brian Tompsett.

21 59. On April 20, 2009, Swing First filed testimony summaries of its witnesses.

22 60. On April 21, 2009, Swing First filed testimony summaries of its witnesses.

23 61. On April 22, 2009, RUCO filed testimony summaries of its witnesses.

24 62. On April 24, 2009, Staff filed testimony summaries of its witnesses.

25 63. On April 23, 2009, the hearing commenced as scheduled. Appearances were entered
26 by Johnson, intervenors Swing First, Florence, RUCO, and Staff. No members of the public
27 appeared to provide public comment.

28 64. On Monday, April 27, 2009, at the commencement of the third day of hearing,

1 counsel for Johnson informed the Commission that Swing First had informed counsel for Johnson
2 over the weekend of the existence of a transcript of a recorded conversation between Swing First
3 witness Mr. David Ashton and Johnson employee Mr. Gary Larson ("Ashton Transcript"). Counsel
4 for Johnson indicated that counsel for Swing First intended to offer the transcript into evidence, and
5 requested that it be excluded. Counsel for Swing First had marked a copy of the Ashton Transcript
6 as an exhibit.

7 65. The Administrative Law Judge conducted an in camera review of the Ashton
8 Transcript, and subsequently ordered briefing on its admissibility. Discovery was reopened to
9 allow additional discovery prior to the briefing deadline. The parties were informed that the Ashton
10 Transcript would be treated as confidential and kept under seal pending a ruling on its admissibility,
11 and that parties who wished to submit briefs on the transcript's admissibility could accomplish
12 access to the Ashton Transcript by entering into a confidentiality agreement with Johnson. The
13 timeclock for processing this matter was suspended pending a ruling on the admissibility of the
14 Ashton Transcript.

15 66. On May 8, 2009, Pulte Homes filed a letter in the docket.

16 67. On May 11, 2009, RUCO filed its opening brief of the admissibility of the Ashton
17 Transcript.

18 68. On May 22, 2009, Johnson, Swing First, and Staff filed opening briefs regarding the
19 admissibility of the Ashton Transcript.

20 69. On May 29, 2009, Johnson, RUCO, and Swing First filed reply briefs regarding the
21 admissibility of the Ashton Transcript.

22 70. On May 29, 2009, Swing First filed a Notice of Availability of Witness and Counsel,
23 indicating that counsel for Swing First would be unavailable from June 8 through June 19, 2009,
24 and that Swing First's witness David Ashton would be available to testify on July 9-10, 2009.

25 71. On June 1, 2009, Johnson docketed a filing in reply to issues raised in Swing First's
26 May 29, 2009 reply brief.

27 72. On June 30, 2009, a Procedural Order was issued setting a procedural conference to
28 commence on July 17, 2009, at 1:30 p.m., for the purpose of taking oral argument on the issues

1 raised in the parties' briefings on the admissibility of the Ashton Transcript.

2 73. On the morning of July 17, 2009, counsel for Swing First contacted the Hearing
3 Division to request authority to participate telephonically in the oral argument due to an unforeseen
4 medical issue. Counsel for Swing First also informed the Hearing Division that counsel for the
5 Town of Florence would not be in attendance for the scheduled oral argument. Subsequently, on
6 July 17, 2009, at 10:30 a.m., a telephonic procedural conference was held to address the issue.
7 Counsel for Johnson, Swing First, RUCO, and Staff attended. At the telephonic procedural
8 conference, counsel for the parties were informed that under the circumstances, the oral argument
9 would be continued to a later date.

10 74. On July 20, 2009, a Procedural Order was issued setting a date of July 23, 2009 for
11 the continuance of the procedural conference originally set for July 17, 2009.

12 75. On July 23, 2009, a procedural conference was convened as scheduled. Johnson,
13 Swing First, RUCO and Staff appeared through counsel and provided oral argument regarding the
14 admissibility of the Ashton Transcript. After oral argument was taken, the Administrative Law
15 Judge issued a preliminary ruling on admissibility of the Ashton Transcript, which had not yet been
16 moved into evidence. It was ruled that portions of the Ashton Transcript might be admitted if
17 offered for the purpose of impeachment; and that portions of the Ashton Transcript might be
18 admitted as direct evidence in regard to (1) customer service issues, (2) billing issues, and (3)
19 revenue issues. It was ruled that because allegations that Johnson attempted to drive Swing First
20 out of business are not relevant to this rate case proceeding, the transcript would not be admissible
21 in this proceeding for the purpose of supporting those allegations.

22 76. On July 24, 2009, a Procedural Order was issued setting a date of September 21,
23 2009, for the continuance of the hearing, and setting deadlines for Staff's filing of revised
24 surrebuttal testimony on the CAGWD assessment issue as requested by Staff, and for the Company
25 to file rejoinder testimony in response. On July 27, 2009, a Procedural Order was issued correcting
26 an incorrectly stated deadline in the July 24, 2009 Procedural Order.

27 77. On July 28, 2009, Staff filed revised surrebuttal testimony on the CAGWD
28 assessment issue.

1 78. On August 17, 2009, Swing First filed a Motion for Date Certain requesting that Mr.
2 Ashton's testimony be confined to Thursday, September 24 and Friday, September 25, 2009.

3 79. On August 27, 2009, a Procedural Order was issued denying the August 17, 2009
4 Motion for Date Certain due to the possibility that Mr. Ashton's testimony might be required
5 beyond Friday, September 25, 2009, in order to allow sufficient time for his cross-examination.

6 80. On September 8, 2009, Johnson filed supplemental rejoinder testimony on the issue
7 of the CAGWD assessment issue.

8 81. The hearing resumed as scheduled on September 21, 2009, and concluded on October
9 1, 2009.

10 82. On October 26, 2009, Swing First filed a Motion to Admit Late-Filed Exhibits.

11 83. On October 29, 2009, RUCO filed a response to Swing First's October 26, 2009
12 motion, and stated that RUCO had no objection to the admission of the proposed late-filed exhibits.

13 84. On October 30, 2009, the Company, RUCO, and Staff filed their final post-hearing
14 schedules.

15 85. On October 30, 2009, Johnson filed a Response and Objection to Swing First's
16 October 26, 2009 motion. Johnson objected to the admission of the proposed late-filed exhibits,
17 and stated that if they are admitted, Johnson wishes to have the opportunity to provide additional
18 testimony and documentary evidence to supplement the evidentiary record and to rebut certain
19 statements in the October 26, 2009 motion.

20 86. On November 3, 2009, a Procedural Order was issued denying Swing First's October
21 26, 2009 motion. The Procedural Order stated that the record in this proceeding is closed; that both
22 Swing First and Johnson are parties to Docket No. WS-02987A-08-0049, which is a complaint filed
23 by Swing First against Johnson; and that Swing First may wish to pursue the subject matter of its
24 proposed late-filed exhibits in that docket.

25 87. On November 20, 2009, the Company, Florence, Swing First, RUCO, and Staff filed
26 opening post-hearing briefs.

27 88. On December 11, 2009, the Company, Swing First, RUCO, and Staff filed reply post-
28 hearing briefs.

Water Rates

89. The Company's FVRB for its water division is (\$2,414,613).

90. The Company's present rates and charges for its water division produced adjusted test year operating revenues of \$13,172,899 and adjusted test year operating expenses of \$9,553,304, for a test year operating income of \$3,619,595.

91. For its water division, the Company requested rates that would result in total revenues of \$10,293,877, a revenue decrease of \$2,879,022, or 21.86 percent. RUCO recommended rates that would yield total revenues of \$13,099,181, a decrease of \$73,718, or 0.56 percent. Staff recommended total revenues of \$10,156,009, a decrease of \$3,016,800, or 22.90 percent.

92. Because the Company's adjusted FVRB for its water division is negative, a rate of return calculation is not meaningful. Based on the unique circumstances of this case, it is appropriate to use an operating margin to set fair and reasonable rates, and to allow a 3 percent operating margin, for revenues of \$9,773,939. This represents a \$3,398,960, or 25.80 percent, revenue decrease from \$13,172,899 to \$9,773,939.

93. The Company's gross revenue for its water division should decrease by \$3,398,960.

94. Average and median usage during the test year for the Company's 3/4 inch meter residential water customers were 6,931 and 6,000 gallons per month, respectively.

95. Under the Company's proposed rates, an average usage (6,931 gallons/month) residential water customer on a 3/4-inch meter would experience a decrease of \$8.51, approximately 19.99 percent, from \$42.59 per month to \$34.08 per month. The Company's proposed rates do not include its requested adjustor for CAGRD expenses and thus do not show the total amount customers would pay if the Company's requested CAGRD adjustor mechanism were implemented.

96. Under the rates adopted herein, an average usage (6,931 gallons/month) residential water customer on a 3/4-inch meter would experience a monthly rate decrease of \$12.78, approximately 30.01 percent, from \$42.59 per month to \$29.81 per month.

Wastewater Rates

97. The Company's FVRB for its wastewater division is \$136,562.

1 98. The Company's present rates and charges for its wastewater division produced
2 adjusted test year operating revenues of \$11,354,014 and adjusted test year operating expenses of
3 \$9,432,270, for a test year operating income of \$1,921,744.

4 99. For its wastewater division, the Company requested rates that would result in total
5 revenues of \$13,680,546, a revenue increase of \$2,326,532, or 20.49 percent. RUCO recommended
6 rates that would yield total revenues of \$10,838,617, a decrease of \$515,397 or 4.54 percent. Staff
7 recommended total revenues of \$10,458,914, a decrease of \$895,100, or 7.88 percent.

8 100. Because the Company's adjusted FVRB for its wastewater division is so small, a rate
9 of return calculation is not meaningful. Based on the unique circumstances of this case, it is
10 appropriate to use an operating margin to set fair and reasonable rates, and to allow a 3 percent
11 operating margin, for operating income of \$290,610. This represents a \$1,667,019, or 14.68
12 percent, revenue decrease, from \$11,354,014 to \$9,686,995.

13 101. Under the Company's proposed rates, a residential wastewater customer on a 3/4 inch
14 water meter would experience an increase of \$8.33, approximately 21.64 percent, from \$38.50 per
15 month to \$46.83 per month.

16 102. Under the rates adopted herein, a residential wastewater customer on a 3/4 inch water
17 meter would experience a decrease of \$5.71, approximately 14.83 percent, from \$38.50 per month
18 to \$32.79 per month.

19 103. It is reasonable and in the public interest to approve the depreciation rates set forth in
20 Exhibit B attached hereto and to require their use by the Company on a going-forward basis.

21 104. It is reasonable and in the public interest to discontinue the Company's authority to
22 collect additional HUFs for both its water and wastewater divisions, and to require, as a prerequisite
23 to approval of a new hook up fee tariff for the Company in the future, a certification by a Certified
24 Public Accounting firm that the Company has a membership equity level of at least 40 percent.

25 105. It is reasonable and in the public interest to require the Company to begin a 12-month
26 monitoring exercise of the Johnson Ranch water system, to comply with the Staff recommendations
27 regarding the docketing of the system monitoring results as a compliance item in this case, and to
28 prepare and file a report as recommended by Staff if the reported water loss for the period from

1 September 1, 2010 through September 1, 2011, is greater than 10 percent. In no case should water
2 loss be allowed to remain at 15 percent or greater. If for any reason the water loss for the Johnson
3 Ranch water system is not reduced to less than 15 percent by October 1, 2011, Staff should be
4 required to initiate an Order to Show Cause against the Company.

5 106. It is reasonable and in the public interest to require the Company to keep its records in
6 accordance with the NARUC USOA and Commission rules in a manner that will support its filings
7 with the Commission.

8 107. It is reasonable, appropriate, and in the public interest to require the Company to
9 prepare an action plan that indicates the specific steps it will take to demonstrate, by means of its
10 day to day record keeping regarding transactions between the Company and all entities with which
11 it conducts business, including, but not limited to, its affiliates and related parties, that its dealings
12 are arm's length, transparent, and well-documented; to require the Company to file the plan within
13 90 days for Staff's review; and to require Staff to assess the plan and its adequacy, and file a report
14 with Staff's findings and recommendations on the action plan accompanied by a Recommended
15 Order for Commission approval or disapproval of the Company's action plan, within 60 days of
16 receipt of the Company's action plan.

17 108. It is reasonable and in the public interest to require the Company to file, within 30
18 days, a list of outstanding NOV's issued by ADEQ, and to list (1) the procedural status of each
19 NOV; and (2) steps the Company is taking to come into compliance with ADEQ requirements.

20 109. It is reasonable and in the public interest to require the Company to notify the
21 Commission at such time that the Company comes into full compliance with all ADEQ
22 requirements, including resolving all outstanding NOV's. We will require that Staff, within 60 days
23 of receipt of such filing, review the filing, verify the Company's compliance, and file a status report
24 in this docket indicating that the Company has come into full compliance with all ADEQ
25 requirements.

26 110. In light of the need to conserve groundwater in Arizona, we believe it is reasonable to
27 require Johnson Utilities to address conservation and submit for Commission approval, within 120
28 days of the effective date of this Decision, at least ten Best Management Practices ("BMPs") (as

1 outlined in ADWR's Modified Non-Per Capita Conservation Program). A maximum of two of
2 these BMPs may come from the "Public Awareness/PR or Education and Training" categories of
3 the BMPs. Johnson Utilities may request cost recovery of actual costs associated with BMPs
4 implemented.

5 CONCLUSIONS OF LAW

6 1. Johnson Utilities, LLC, dba Johnson Utilities Company is a public service corporation
7 pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-203, 40-204, 40-250 and 40-
8 251.

9 2. The Commission has jurisdiction over the Company and the subject matter of the
10 application.

11 3. Notice of the proceeding was provided in conformance with law.

12 4. The fair value of the Company's water division rate base is (\$2,414,613), and
13 therefore a rate of return analysis is not reasonable. Authorizing an operating margin of 3 percent
14 produces rates and charges that are just and reasonable.

15 5. The fair value of the Company's wastewater division rate base is \$136,562, and
16 therefore a rate of return analysis is not reasonable. Authorizing an operating margin of 3 percent
17 produces rates and charges that are just and reasonable.

18 6. The rates and charges approved herein are reasonable.

19 7. The Company should be required to file, within 30 days, a list of outstanding NOV's
20 issued by ADEQ, and to list (1) the procedural status of each NOV; and (2) steps the Company is
21 taking to come into compliance with ADEQ requirements.

22 8. It is reasonable and in the public interest to require the Company to notify the
23 Commission at such time that the Company comes into full compliance with all ADEQ
24 requirements, including resolving all outstanding NOV's, and to require that Staff, within 60 days of
25 receipt of such filing, review the filing, verify the Company's compliance, and file a status report in
26 this docket indicating that the Company has come into full compliance with all ADEQ requirements.

27 9. It is reasonable and in the public interest to discontinue the Company's authority to
28 collect additional hook up fees for both its water and wastewater divisions.

10. It is reasonable and in the public interest to require, as a prerequisite to approval of a new hook up fee tariff for the Company in the future, certification by a Certified Public Accounting firm that the Company has a membership equity level of at least 40 percent.

11. It is reasonable and in the public interest to require the Company to begin a 12-month monitoring exercise of the Johnson Ranch water system; to comply with the Staff recommendations regarding the docketing of the system monitoring results as a compliance item in this case; to prepare and file a report as recommended by Staff if the reported water loss for the period from September 1, 2010 through September 1, 2011, is greater than 10 percent; but in no case to allow water loss to remain at 15 percent or greater.

12. It is reasonable and in the public interest to require Staff to initiate an Order to Show Cause against the Company if for any reason the water loss for the Johnson Ranch water system is not reduced to less than 15 percent by October 1, 2011.

13. It is reasonable and in the public interest to require the Company to keep its records in accordance with the NARUC USOA and Commission rules in a manner that will support its filings with the Commission.

14. It is reasonable, appropriate, and in the public interest to require the Company to prepare an action plan that indicates the specific steps it will take to demonstrate, by means of its day to day record keeping regarding transactions between the Company and all entities with which it conducts business, including, but not limited to, its affiliates and related parties, that its dealings are arm's length, transparent, and well-documented; to require the Company to file the plan within 90 days for Staff's review; and to require Staff to assess the plan and its adequacy, and file a report with Staff's findings and recommendations on the action plan accompanied by a Recommended Order for Commission approval or disapproval of the Company's action plan, within 60 days of receipt of the Company's action plan.

15. It is reasonable and in the public interest to approve the depreciation rates set forth in Exhibit A attached hereto and to require their use by the Company on a going-forward basis.

ORDER

IT IS THEREFORE ORDERED that Johnson Utilities, LLC, dba Johnson Utilities Company

1 shall file with the Commission, on or before August 20, 2010, the schedules of rates and charges
2 attached hereto and incorporated herein as Exhibit A, which shall be effective for all service rendered
3 on and after June 1, 2010.

4 IT IS FURTHER ORDERED that Johnson Utilities, LLC, dba Johnson Utilities Company
5 shall notify its water and wastewater division customers of the revised schedules of rates and charges
6 authorized herein by means of an insert, in a form acceptable to Staff, included in its next regularly
7 scheduled billing.

8 IT IS FURTHER ORDERED that Johnson Utilities, LLC, dba Johnson Utilities Company
9 shall file, with docket control as a compliance item in this docket, within 30 days, a list of
10 outstanding NOV's issued by ADEQ, and to list (1) the procedural status of each NOV; and (2) steps
11 the Company is taking to come into compliance with ADEQ requirements.

12 IT IS FURTHER ORDERED that Johnson Utilities, LLC, dba Johnson Utilities Company
13 shall notify the Commission at such time that the Company comes into full compliance with all
14 ADEQ requirements, including resolving all outstanding NOV's. Upon receipt of such filing, the
15 Commission's Utilities Division shall, within 60 days, review the filing, verify the Company's
16 compliance, and file a status report, as a compliance item in this docket, indicating that the Company
17 has come into full compliance with all ADEQ requirements.

18 IT IS FURTHER ORDERED that the authority previously granted to Johnson Utilities, LLC,
19 dba Johnson Utilities Company to collect hook-up fees is hereby discontinued for both its water and
20 wastewater divisions.

21 IT IS FURTHER ORDERED that in order to receive approval of a new hook up fee tariff for
22 either its water or wastewater division, Johnson Utilities, LLC, dba Johnson Utilities Company shall
23 demonstrate, by means of a certification by a Certified Public Accounting firm, that it has attained a
24 membership equity level of at least 40 percent.

25 IT IS FURTHER ORDERED that Johnson Utilities, LLC, dba Johnson Utilities Company
26 shall begin a 12-month monitoring exercise of its Johnson Ranch water system, and shall docket the
27 results of the system monitoring as a compliance item in this case by October 1, 2011. If the reported
28 water loss for the period from September 1, 2010 through September 1, 2011, is greater than 10

1 percent, Johnson Utilities, LLC, dba Johnson Utilities Company shall prepare a report containing a
2 detailed analysis and a plan to reduce water loss to 10 percent or less, and if it believes it is not cost
3 effective to reduce water loss to less than 10 percent, the report shall include a detailed cost benefit
4 analysis to support its opinion. This report shall be docketed as a compliance item for this
5 proceeding for review and certification by Staff. The report or cost benefit analysis, if required, shall
6 be docketed by November 30, 2011. In no case shall the Company allow water loss to remain at
7 greater than 15 percent. If water loss is not reduced to less than 15 percent by October 1, 2011, Staff
8 shall initiate an Order to Show Cause against the Company.

9 IT IS FURTHER ORDERED that Johnson Utilities, LLC, dba Johnson Utilities Company
10 shall keep its records in accordance with the National Association of Regulatory Utility
11 Commissioners Uniform System of Accounts and Commission rules in a manner that will support its
12 filings with the Commission.

13 IT IS FURTHER ORDERED that Johnson Utilities, LLC, dba Johnson Utilities Company
14 shall prepare an action plan that indicates the specific steps it will take to demonstrate, by means of
15 its day to day record keeping regarding transactions between the Company and all entities with which
16 it conducts business, including, but not limited to, its affiliates and related parties, that its dealings are
17 arm's length, transparent, and well-documented. The Company shall file the plan with the
18 Commission's Docket Control Center as a compliance item in this case within 90 days for Staff's
19 review. Staff shall assess the plan and its adequacy, and shall file, with the Commission's Docket
20 Control Center as a compliance item in this case, within 60 days of Staff's receipt of the Company's
21 action plan, a report with Staff's findings and recommendations on the action plan accompanied by a
22 Recommended Order for Commission approval or disapproval of the Company's action plan.

23 IT IS FURTHER ORDERED that Johnson Utilities, LLC, dba Johnson Utilities Company
24 shall, on a going-forward basis, use the depreciation rates set forth in Exhibit B attached hereto.

25 IT IS FURTHER ORDERED that Johnson Utilities, LLC dba Johnson Utilities Company, shall
26 implement a CAGR adjustor mechanism as proposed by Staff, inclusive of all eight conditions
27 proposed by Staff.

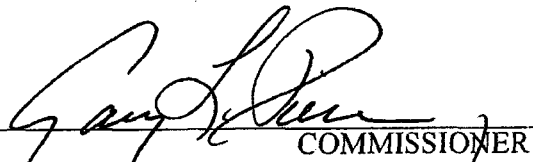
28 ...

IT IS FURTHER ORDERED that Johnson Utilities, LLC, dba Johnson Utilities Company shall submit for Commission consideration within 120 days of the effective date of this Decision, at least ten Best Management Practices (as outlined in Arizona Department of Water Resource's Modified Non-Per Capita Conservation Program). A maximum of two of these BMPs may come from the "Public Awareness/PR" or "Education and Training" categories of the BMPs. Johnson Utilities, LLC, dba Johnson Utilities Company may request cost recovery of actual costs associated with the BMPs implemented.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.


CHAIRMAN


COMMISSIONER


COMMISSIONER


COMMISSIONER


COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 24th day of August, 2010.


ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR:

JOHNSON UTILITIES, L.L.C., DBA JOHNSON
UTILITIES COMPANY

2
3 DOCKET NO.:

WS-02987A-08-0180

4 Jeffrey W. Crockett
5 Bradley S. Carroll
6 Kristoffer P. Kiefer
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10 Phoenix, AZ 85004
11 Attorneys for Johnson Utilities, LLC

12 Craig A. Marks
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15 Phoenix, AZ 85028
16 Attorney for Swing First Golf, LLC

17 Daniel Pozefsky, Chief Counsel
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19 CONSUMER OFFICE
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21 Phoenix, AZ 85007-2958

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26 Florence, AZ 85232-2670

27 Janice Alward, Chief Counsel
28 Ayesha Vohra, Staff Attorney
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007-2927

Steve Olea, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007-2927

EXHIBIT A
WATER DIVISION

MONTHLY USAGE CHARGE:

5/8" x 3/4" Meter	\$11.00
3/4" Meter	16.50
1" Meter	27.50
1-1/2" Meter	55.00
2" Meter	88.00
3" Meter	176.00
4" Meter	275.00
6" Meter	550.00
8" Meter	880.00
10" Meter	1,265.00

COMMODITY CHARGES

(Residential, Commercial, Industrial)

All Meter Sizes

Gallons Included in Minimum 0

5/8-Inch Meter (Residential)

0 to 4,000 Gallons	\$1.7600
4,001 to 10,000 Gallons	2.1400
Over 10,000 Gallons	2.4960

**3/4-Inch Meter Commercial, Industrial, Irrigation
and Public Authority**

0 to 10,000 Gallons
Over 10,000 Gallons

1-Inch Meter

From 1 to 32,000 Gallons	2.1400
Over 32,000 Gallons	2.4960

1-1/2-Inch Meter

From 1 to 88,000 Gallons	2.1400
Over 88,000 Gallons	2.4960

2-Inch Meter

From 1 to 156,000 Gallons	2.1400
Over 156,000 Gallons	2.4960

3-Inch Meter

From 1 to 339,000 Gallons	2.1400
Over 339,000 Gallons	2.4960

4-Inch Meter

From 1 to 545,000 Gallons	2.1400
Over 545,000 Gallons	2.4960

6-Inch Meter

From 1 to 1,120,000 Gallons	2.1400
Over 1,120,000 Gallons	2.4960

8-Inch Meter

From 1 to 1,800,000 Gallons	2.1400
Over 1,800,000 Gallons	2.4960

10-Inch Meter

From 1 to 2,600,000 Gallons	2.1400
Over 2,600,000 Gallons	2.4960

Construction Water

2.4960

Central Arizona Water

See Tariff

WASTEWATER DIVISION**MONTHLY USAGE CHARGE:**

5/8" Meter	\$ 29.8100
3/4" Meter	32.7900
1" Meter	41.7300
1-1/2" Meter	53.6508
2" Meter	86.4400
3" Meter	327.8700
4" Meter	625.9300
6" Meter	864.3700
8" Meter	1,092.6000
10" Meter	1,748.3300
Effluent: per 1,000 gallons	\$ 0.5280
Per acre foot	170.3200

SERVICE CHARGES

	<u>Staff</u>
Establishment	\$ 25.00
Establishment (After Hours)	40.00
Deposit (Residential)	(a)
Deposit (None-Residential)	(a)
Deposit Interest (b)	(b)
Re-establishment (Within 12 Months)	(c)
Re-establishment (After Hours)	(c)
NSF Check	15.00
Deferred Payment, Per Month	1.50%
After-hours Service, Per Rule R14-2-403D	Refer to Above Charges
Service Line Connection Charge	350.00
Late Charge, Per Month	40.00
Main Extension Tariff, per rule R14-2-606B except refunds shall be based upon 5% of gross revenues from bonafide customers, until all advances are fully refunded to the Developer.	Cost

- (a) Residential: two times the average bill.
Non-Residential: two and one-half times the maximum monthly bill.
(b) Interest per Rule R14-2-403(B)
(c) Minimum charge times number of months off the system, per rule R14-2-103(D).

IN ADDITION TO THE COLLECTION OF REGULAR RATES, THE UTILITY WILL COLLECT FROM ITS CUSTOMERS A PROPORTIONATE SHARE OF ANY PRIVILEGE, SALES, USE AND FRANCHISE TAX, PER RULE 14-2-409(D)(5)

EXHIBIT "B"**Water Depreciation Rates**

NARUC Acct. No.	Depreciable Plant	Average Service Life (Years)	Annual Accrual Rate (%)
304	Structures & Improvements	30	3.33
305	Collecting & Impounding Reservoirs	40	2.50
306	Lake, River, Canal Intakes	40	2.50
307	Wells & Springs	30	3.33
308	Infiltration Galleries	15	6.67
309	Raw Water Supply Mains	50	2.00
310	Power Generation Equipment	20	5.00
311	Pumping Equipment	8	12.5
320	Water Treatment Equipment		
320.1	Water Treatment Plants	30	3.33
320.2	Solution Chemical Feeders	5	20.0
330	Distribution Reservoirs & Standpipes		
330.1	Storage Tanks	45	2.22
330.2	Pressure Tanks	20	5.00
331	Transmission & Distribution Mains	50	2.00
333	Services	30	3.33
334	Meters	12	8.33
335	Hydrants	50	2.00
336	Backflow Prevention Devices	15	6.67
339	Other Plant & Misc Equipment	15	6.67
340	Office Furniture & Equipment	15	6.67
340.1	Computers & Software	5	20.00
341	Transportation Equipment	5	20.00
342	Stores Equipment	25	4.00
343	Tools, Shop & Garage Equipment	20	5.00
344	Laboratory Equipment	10	10.00
345	Power Operated Equipment	20	5.00
346	Communication Equipment	10	10.00
347	Miscellaneous Equipment	10	10.00
348	Other Tangible Plant	10	---

EXHIBIT "B"

Wastewater Depreciation Rates

NARUC Acct. No.	Depreciable Plant	Average Service Life (Years)	Annual Accrual Rate (%)
354	Structures & Improvements	30	3.33
355	Power Generation Equipment	20	5.00
360	Collection Sewers – Force	50	2.0
361	Collection Sewers- Gravity	50	2.0
362	Special Collecting Structures	50	2.0
363	Services to Customers	50	2.0
364	Flow Measuring Devices	10	10.00
365	Flow Measuring Installations	10	10.00
366	Reuse Services	50	2.00
367	Reuse Meters & Meter Installations	12	8.33
370	Receiving Wells	30	3.33
371	Pumping Equipment	8	12.50
374	Reuse Distribution Reservoirs	40	2.50
375	Reuse Transmission & Distribution System	40	2.50
380	Treatment & Disposal Equipment	20	5.0
381	Plant Sewers	20	5.0
382	Outfall Sewer Lines	30	3.33
389	Other Plant & Miscellaneous Equipment	15	6.67
390	Office Furniture & Equipment	15	6.67
390.1	Computers & Software	5	20.0
391	Transportation Equipment	5	20.0
392	Stores Equipment	25	4.0
393	Tools, Shop & Garage Equipment	20	5.0
394	Laboratory Equipment	10	10.0
395	Power Operated Equipment	20	5.0
396	Communication Equipment	10	10.0
397	Miscellaneous Equipment	10	10.0
398	Other Tangible Plant	---	---

EXHIBIT 2



0000125725

BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

MAY 27 1997

DOCKETED BY

Jed

CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
RENZ D. JENNINGS
COMMISSIONER

IN THE MATTER OF THE APPLICATION OF
JOHNSON UTILITIES, L.L.C. DBA JOHNSON
UTILITIES COMPANY FOR A CERTIFICATE
OF CONVENIENCE AND NECESSITY TO
PROVIDE WATER AND WASTEWATER
SERVICE IN PINAL COUNTY, ARIZONA.

DOCKET NO. U-2987-95-284

IN THE MATTER OF THE APPLICATION OF
JOHNSON UTILITIES, L.L.C. DBA JOHNSON
UTILITIES COMPANY FOR AUTHORITY TO
ISSUE A PROMISSORY NOTE(S) AND OTHER
EVIDENCE OF INDEBTEDNESS PAYABLE AT
PERIODS OF MORE THAN TWELVE MONTHS
AFTER THE DATE OF ISSUANCE, AND A
REVOLVING LINE OF CREDIT.

DOCKET NO. U-2987-95-285

DECISION NO. 60223

OPINION AND ORDER

DATE OF HEARING: November 25, 1996
PLACE OF HEARING: Phoenix, Arizona
PRESIDING OFFICER: Marc E. Stern
APPEARANCES: SALLQUIST & DRUMMOND, P.L.L.C., by Mr. Richard
L. Sallquist, on behalf of Johnson Utilities, L.L.C.; and
Mr. Peter A. Breen, Staff Attorney, Legal Division, on
behalf of the Utilities Division of the Arizona Corporation
Commission.

BY THE COMMISSION:

On June 15, 1995, Johnson Utilities, L.L.C. dba Johnson Utilities Company ("JUC" or
"Applicant") filed with the Arizona Corporation Commission ("Commission") an application for a
Certificate of Convenience and Necessity ("Certificate") to provide water and wastewater treatment
service to approximately five sections of land southeast of Queen Creek, Pinal County, Arizona. At the
same time, Applicant also filed an application requesting the Commission's authorization for the sale of
membership interests in JUC which has been organized as a limited liability company ("LLC") and to
incur indebtedness ("Financing Application" or collectively "Applications"). JUC's Financing

1 Application sought Commission approval to issue two classes of membership interests, managing
 2 membership interests and associate membership interests, with the sale of these interests to raise
 3 \$1,815,596 to partially finance the first year of plant construction of both systems. Additionally, JUC's
 4 Financing Application sought Commission approval to issue up to \$1,300,000 in long-term debt which
 5 would also be used to fund construction of JUC's water and wastewater facilities in its first year of
 6 operations and also requested a revolving line of credit not to exceed \$270,000.

7 On August 4, 1995, JUC filed an amendment to its Financing Application.

8 On May 29, 1996, JUC filed an Addendum to the Applications and again amended its Financing
 9 Application.

10 On September 24, 1996, the Commission's Utilities Division ("Staff") filed its Staff Report
 11 recommending approval of the Applications after a hearing.

12 On September 30, 1996, the Commission, by Procedural Order, consolidated the Applications for
 13 hearing and scheduled the proceeding for hearing.

14 On November 25, 1996, pursuant to the Commission's Order, a full public hearing took place
 15 before a duly authorized Hearing Officer of the Commission at its offices in Phoenix, Arizona. Both
 16 Applicant and Staff appeared with counsel. At the conclusion of the proceeding, the matter was taken
 17 under advisement pending submission of a Recommended Opinion and Order to the Commission.

18

19 Having considered the entire record herein and being fully advised in the premises, the
 20 Commission finds, concludes, and orders that:

21 FINDINGS OF FACT

22 1. On June 15, 1995, JUC filed with the Commission an Application for a Certificate
 23 authorizing it to construct, operate, and maintain facilities to provide water and wastewater treatment
 24 service to the public for a parcel of land consisting of approximately five sections (3,200 acres) in an area
 25 on both sides of the Hunt Highway southeast of Queen Creek, Pinal County, Arizona, as is more fully
 26 described in Exhibit A attached hereto and incorporated by reference.

27 2. JUC was formed by Mr. George H. Johnson, President/CEO of Johnson International, Inc.
 28 ("JI") and the Johnson Trust and its affiliates.

1 3. JUC was organized under the laws of Arizona relating to LLCs and will have two classes
2 of membership interests¹, managing memberships which will be owned by Mr. Johnson and his family,
3 and associate memberships which will be owned by five or six major developers of the project.

4 4. Applicant will be managed by Mr. and Mrs. Johnson. Mr. Johnson has been involved in
5 real estate development for approximately 25 years and has developed approximately 8,000 acres in the
6 vicinity of Tucson, Arizona and 6,500 acres in a community outside of Salt Lake City, Utah.
7 Additionally, he has also developed land in the Scottsdale, Arizona area.

8 5. Mr. Johnson has previously been involved in the ownership and operation of another
9 public service corporation, Foothills Water Company, which also held a Certificate for the provision of
10 water and wastewater service. Foothills Water company was sold to Cañada Hills Water Company in
11 late 1986.

12 6. JI is developing the property described in Exhibit A as Johnson Ranch. Mr. Johnson
13 envisions the project to be built out over 10 to 15 years with approximately 10,000 residences and a
14 population of approximately 20,000 people. Johnson Ranch property will include ranchettes, middle
15 income housing, and a number of private residences surrounding a golf course.

16 7. JI owns approximately 50 percent of the land for the envisioned development with the
17 Arizona State Land Department controlling a large portion of the remainder along with a smaller parcel
18 owned by a private individual.

19 8. JI plans on acquiring the State owned lands through an open bidding process and it has
20 received support from the State Land Department and the private land owner who also wishes to develop
21 his property.

22 9. JUC has provided notice of the Application and the hearing thereon in accordance with
23 the law.

24 10. JUC has obtained a franchise from Pinal County for the majority of the area for which it
25

26 ¹ Ownership in an LLC is denoted as a membership interest rather than a share as with a
27 corporation. JUC was originally organized as an LLC in an attempt to circumvent the gross-up tax
28 associated with contributions and advances to utility companies. However, JUC has indicated that it may
reorganize as a Subchapter S corporation because of the recent federal law change regarding the gross-up
tax.

1 seeks a Certificate with the exception of a parcel which lies east of the Hunt Highway for which it is in
2 the process of securing a franchise.

3 11. JUC has submitted a five year construction plan which will be completed in three phases
4 and estimates that the total cost of construction for both water and wastewater treatment systems for
5 Phase I will be just over \$2.6 million.

6 12. Applicant's water facilities will initially consist of two wells, a one million gallon storage
7 tank and the necessary transmission and distribution lines through the first phase of development within
8 Johnson Ranch.

9 13. The first phase of JUC's wastewater treatment system will have a capacity of 300,000-
10 gallons-per-day, and will include collection mains, effluent pumping and transmission lines, and an
11 irrigated lagoon system and wetlands marsh. Plans call for treated effluent to be used on a planned golf
12 course in the project.

13 14. Applicant has not yet secured a Certificate of Approval to Construct ("CAC") from the
14 Arizona Department of Environmental Quality ("ADEQ") for either system and it has not secured a
15 Certificate of an Assured Water Supply ("CAWS") from the Arizona Department of Water Resources
16 ("ADWR").

17 15. Staff engineers have examined the construction plans and cost figures for both the water
18 and wastewater treatment systems and found the plans to be reasonable and appropriate. However, Staff
19 engineers have made no determination with respect to whether the proposed plant in service will be "used
20 and useful" and reserves the right to determine rate base treatment, if any, in a future rate making
21 proceeding before the Commission.

22 16. Because a shortfall in effluent irrigation will result for JUC's golf course, JUC plans to
23 supplement the effluent with CAP canal water. This will require JUC to build a turnout and pumping
24 station with an estimated cost of \$91,000 along the Magana CAP canal and a 2,600 foot long water
25 transmission line from the canal to the golf course where the CAP water will be distributed.

26 17. Due to the extra golf course expense, Staff is recommending that JUC establish a "CAP"
27 tariff similar to that approved by the Commission for Arizona Water Company in Docket No. L-1445-94.
28

061 which resulted in Decision No. 58593 (April 6, 1994).²

18. There are no public service corporations or municipally owned water or wastewater treatment systems authorized to provide or providing service in or near the area requested to be certificated herein.

19. JUC estimates that average water usage per customer will be 7,600 gallons of water per month and projects that it will service approximately 127 water and wastewater customers by the end of its first year of operation. UC expects customer growth will reach approximately 254 customers per year over the next four years of its operations.³

20. Mr. Johnson indicated that he and JI will be responsible for any revenue short fall in order to cover Applicant's initial operating expenses and provided evidence that JUC will have the necessary financial and technical backing to enable it to provide public water and wastewater treatment service in the area described in Exhibit A.

21. The initial rates and charges for JUC's water and wastewater service as recommended by Staff and as proposed by JUC are as follows:⁴

...
...
...
...
...

² This tariff was designed to pass through all of the costs including administration related to the provision of this service to the customer based on estimated maximum demand. The customer provides the funds necessary to install the facilities required by the utility to provide the service as a contribution to the utility.

³ These projections were utilized by Staff in preparing the schedules necessary to determine Applicant's initial rates and charges.

⁴ The rates and charges recommended by Staff were determined after a review of JUC's projections for its first five years of operations and by comparing the rates of five neighboring water systems as follows: Quail Hollow; Queen Creek; H2O, Inc.; Sun Valley Farms IV; and Arizona Water Company/Coolidge Division. Staff's recommended wastewater treatment rates are based on water meter size regardless of customer type.

WATER RATES

Proposed Rates

MONTHLY USAGE CHARGE:

(Includes no water)

	<u>IUC</u>	<u>Staff</u>
5/8" x 3/4" Meter	\$25.00	\$18.00
3/4" Meter	37.50	27.00
1" Meter	62.50	45.00
1 1/2" Meter	N/A	90.00
2" Meter	\$200.00	144.00
3" Meter	N/A	270.00
4" Meter	\$1,250.00	450.00
6" Meter	2,500.00	900.00

Gallage Charge per 1,000 Gallons
(0 to 7,000 gallons)

\$2.50 \$2.25

In Excess of 7,000 gallons

N/A \$2.50

Construction and standpipe charge
(Per 1,000 gallons)

\$3.00 \$3.75

SERVICE LINE AND METER INSTALLATION CHARGES:

(Refundable pursuant to A.A.C. R14-2-405)

5/8" x 3/4" Meter	\$ 365.00	\$ 365.00
3/4" Meter	405.00	405.00
1" Meter	455.00	455.00
1 1/2" Meter	665.00	665.00
2" Meter	1,080.00	1,080.00
3" Meter	N/A	2,190.00
4" Meter - Compound	\$2,985.00	2,985.00
6" Meter - Compound	5,780.00	5,780.00

SERVICE CHARGES:

Establishment	\$25.00	\$25.00
Establishment (After Hours)	\$50.00	\$40.00
Reestablishment (Within 12 Months)	.	.
Reestablishment (After Hours)	* + \$40.00	N/A
Reconnection (Delinquent)	**	\$50.00
Reconnection (After Hours)	** + 30.00	N/A
Meter Test (If Correct)	\$25.00	\$25.00
Meter Re-Read (If Correct)	5.00	5.00
Meter Move at Customer Request	**	**
Deposit (Residential Customer)	***	***
Deposit Interest (Per Annum)	6.00%	6.00%
NSF Check	\$15.00	\$15.00
Deferred Payment (Per Month)	1.50%	1.50%
Late Payment Charge (Per month)	1.50%	1.50%
Hook-up Fee (Including gross-up)	\$1,050.00	\$0.00

- 1 * Number of months off system times the monthly minimum per A.A.C.R14-2-403(D).
 2 ** Cost to include labor, materials, overhead and applicable taxes. No charge if no labor
 3 *** Per A.A.C. R14-2-403(B).

WASTEWATER TREATMENT RATES**Proposed Rates**

	<u>IUC</u>	<u>Staff</u>
<u>MONTHLY USAGE CHARGE:</u>		
General Residential Service *	\$40.00	N/A
5/8" x 3/4" Meter	N/A	\$35.00
3/4" Meter	N/A	38.50
1" Meter	N/A	49.00
1 1/2" Meter	N/A	63.00
2" Meter	N/A	101.50
3" Meter	N/A	385.00
4" Meter	N/A	735.00
6" Meter	N/A	1,015.00

*Company proposed charging the same flat rate for all residential customers regardless of water meter size. Staff proposes charging according to water meter size.

Commercial Service**		
1" water meter	\$40.00	N/A
2" water meter	125.00	N/A

**Staff proposes to charge according to water meter size, not customer type.

<u>EFFLUENT CHARGE:</u>		
per acre foot	\$200.00	\$200.00
per 1,000 gallons	0.62	0.62

Service Line Connection Charge	\$350.00	\$350.00
---------------------------------------	----------	----------

SERVICE CHARGES:

Establishment	\$25.00	\$25.00
Establishment (After Hours)	\$50.00	\$40.00
Reestablishment (Within 12 Months)	*	*
Reestablishment (After Hours)	* + \$40.00	N/A
Reconnection (Delinquent)	**	N/A
Reconnection (After Hours)	** + \$30.00	N/A
Deposit (Residential Customer)	***	***
Deposit Interest (Per Annum)	6.00%	6.00%
NSF Check	\$15.00	\$15.00
Deferred Payment (Per Month)	1.50%	1.50%
Late Payment Charge (Per Month)	1.50%	1.50%
Hook-up Fee (including gross-up)	\$1,400.00	0.00

- 26 * Number of months off system times the monthly minimum per A.A.C. R14-2-603(D).
 27 ** Cost to include labor, materials, overhead and applicable taxes. No charge if no labor
 28 involved. Staff proposes (N/A) no fee for reconnection after disconnection due to
 delinquency and for reconnection after hours because sewer systems do not generally have
 physical disconnection.

1 *** Per A.A.C. R14-2-603(B).

2 22. During the hearing, JUC stipulated to all of the initial rates and charges recommended by
3 Staff with the exception that JUC requests that the Commission authorize it to charge a \$750 hook-up
4 fee for new water customers and a \$1,000 hook-up fee for new sewer customers.

5 23. Staff recommends that the Commission not approve any hook-up fees for either the water
6 or wastewater treatment systems at this time. In the past, the Commission has authorized such fees only
7 in the cases of existing companies where the risk of plant expansion in new areas is placed on the
8 developer and the new customers who are to be served by the expansion of utility plant thus, old
9 customers are not affected.

10 24. Staff is also recommending that JUC include in its tariff a provision for the collection of
11 any privilege, sales, or use tax with respect to its operations of the water and sewer utility systems, in
12 accordance with A.A.C. R14-2-409(D)(5) and A.A.C. R14-2-608(D)(5), respectively.

13 25. JUC's Financing Application seeks the Commission's authorization for financing approval
14 to partially fund plant construction of both the water and wastewater treatment systems during the first
15 year of operations and JUC will also utilize the funds generated by the sale of the management
16 membership interests to pay for construction.

17 26. In order to facilitate the formation of JUC as an LLC, Applicant has requested that the
18 Commission approve the sale of its managing memberships to Mr. and Mrs. Johnson and their children
19 for \$848,096 and the sale of the associate memberships to the five or six major developers involved in
20 the development of Johnson Ranch for \$967,500 each.

21 27. In addition to the sale of the membership interests of the LLC, JUC is also seeking the
22 Commission's authorization to issue up to \$1.3 million in long-term debt and secure a revolving line of
23 credit not to exceed \$270,000. Applicant would utilize these monies to fund construction in addition to
24 that paid for by the sale of membership interests during its first year of operations.

25
26
27 28. The capital raised from the sale of associate memberships will be used to pay for part of
28 backbone plant and 100 percent of the related distribution and collection system costs for each
developer's/builder's share of the overall project with part of these funds to be used immediately to start
paying part of the principal of any outstanding debt.

1 28. JUC's operations are to be controlled by its managing members who have the sole voting
2 rights and rights to the majority of the profits, but they also bear the losses of the utility systems.

3 29. Although associate members in JUC would not have voting rights, JUC has proposed that
4 each associate member will be entitled to a percentage share of any profit related to their membership
5 equity and be entitled to an amount equal to 10 percent of the revenues generated from their
6 developments for a fixed period of time in order reduce each associate member's membership equity.

7 30. JUC has indicated that if it elects to reorganize and operate as a corporation, it will enter
8 into standard water and wastewater line extension agreements which it will submit to the Commission
9 for approval.

10 31. JUC's proposed capital structure would consist of approximately 40 percent debt and 60
11 percent equity with the debt to be reduced by the hook-up fees which JUC requested that the Commission
12 authorize in its rate structure.

13 32. Staff recommends that the Commission authorize a capital structure for JUC that consists
14 of approximately 25 percent debt and 75 percent equity in order to protect its future customers from
15 financial risks. Staff believes that the Applicant will not operate profitably until at least the fourth year
16 of its operations, and Staff believes that the risk should be borne by JUC's managing members.

17 33. Staff has recommended the conditional approval of JUC's Applications as follows:

- 18 • adopt Staff's recommended rates and charges and order that JUC file a tariff consistent
19 with same without a gross-up provision or any hook-up charges;
- 20 • that the approval of JUC's Financing Application does not constitute an adjudication that
21 the associate memberships proposed to be offered do not constitute a security nor does
22 the approval hereinafter constitute approval for the sale of the associate memberships as
23 a security;
- 24 • order that JUC file, within 365 days of the effective date of this Decision, a copy of its
25 CAC for its water and wastewater treatment facilities issued by ADEQ;
- 26 • order that JUC file, within 365 days of the effective date of this Decision, a copy of the
27 developer's CAWS issued by ADWR;
- 28 • order that JUC be authorized to issue up to \$1.35 million in managing memberships,

\$967,500 for each associate membership, and up to \$772,000 in a combination of short and long-term debt at an interest rate not to exceed 10 percent.

- that the Commission reserve the right to determine any future rate base treatment of plant financed by either the owners or the developers in conjunction with a permanent rate case.
- order that JUC establish a tariff for non-potable CAP water usage as described hereinabove and file it with the Commission for its approval;
- order that JUC notify the Commission at least 15 days prior to serving its first customer.
- order that JUC file, within 365 days of the effective date of this Decision, a copy of its franchise for the area east of the Hunt Highway for which it does not already have a franchise for as described in Exhibit A; and
- order that JUC file for rate review after 36-months from the date it first provides service to any customer.

34. While we concur with the balance of Staff's recommendations in Finding of Fact No. 33 we believe that, under the circumstances herein, JUC's proposed base hook-up fee of \$750 for new water customers and \$1,000 for new sewer customers should be adopted as described in Exhibits B and C, respectively, attached hereto and the fees collected thereby be treated as contributions. Further, Staff should examine these fees when JUC files for rate review in 36 months and determine whether they remain appropriate at that time.

35. Because of Mr. Johnson's past history of successfully operating a public utility, we are not convinced a performance bond is necessary at this time.

CONCLUSIONS OF LAW

1. Upon beginning operations, JUC will be a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281, 40-282, 40-301 and 40-302
2. The Commission has jurisdiction over JUC and the subject matter of the Applications.
3. Notice of the hearing was given in accordance with the law.
4. Applicant is a fit and proper entity to receive a Certificate authorizing it to construct, operate, and maintain facilities to furnish water and wastewater treatment service to the public in the area described in Exhibit A.

1 5. The public convenience and necessity require the issuance of a Certificate to Applicant
2 authorizing it to provide water and wastewater treatment service to the public in the areas sought to be
3 certificated herein.

4 6. The rates and charges authorized hereinafter are just and reasonable.

5 7. Staff's recommendations, as set forth in Finding of Fact No. 33 should be adopted with
6 the exception that JUC's proposed base hook-up fees of \$750 and \$1,000 for new water and sewer
7 customers, respectively, should be approved as described in Exhibits B and C, respectively, and treated
8 as contributions with these charges being re-examined for their appropriateness when JUC files for rate
9 review in 36 months.

10 8. Financing should be approved as ordered below.

11 9. The financing approved herein is for lawful purposes within Applicant's corporate powers.
12 is compatible with the public interest, with sound financial practices, and with the proper performance
13 by JUC of service as a public service corporation, and will not impair JUC's ability to perform that
14 service.

15 10. The financing approved herein is for the construction of the water and wastewater
16 treatment systems and is reasonably necessary for that purpose, and such purpose is not, wholly or in part,
17 reasonably chargeable to operating expenses or to income.

18 **ORDER**

19 IT IS THEREFORE ORDERED that the application of Johnson Utilities, L.L.C. dba Johnson
20 Utilities Company for a Certificate of Convenience and Necessity authorizing it to construct, maintain
21 and operate facilities in order to provide water and wastewater treatment service to the public in the area
22 more fully described in Exhibit A be, and is hereby, granted; provided that, within one year of the
23 effective date of this Decision, Applicant files a copy of its Certificate of Approval to Construct its water
24 and wastewater treatment facilities for its first phase of development, a copy of Johnson International's
25 Certificate of Assured Water Supply, and a copy of its Pinal County franchise for the area east of the
26 Hunt Highway described in Exhibit A.

27 IT IS FURTHER ORDERED that in the event that Johnson Utilities, L.L.C. dba Johnson Utilities
28 Company does not timely file copies of the Certificate of Approval to Construct, Certificate of an

1 Assured Water Supply, Pinal County franchise, and the performance bond or its equivalent as required
 2 by the preceding ordering paragraphs, then the Certificate of Convenience and Necessity for the area
 3 described in Exhibit A shall be deemed to be denied, without further order by the Arizona Corporation
 4 Commission.

5 IT IS FURTHER ORDERED that on or before May 30, 1997 Johnson Utilities, L.L.C dba
 6 Johnson Utilities Company shall file a tariff containing the following rates and charges for its water and
 7 wastewater treatment services:

8 WATER RATES

9 MONTHLY USAGE CHARGE:

(Includes no water)

10	5/8" x 3/4" Meter	\$ 18.00
11	3/4" Meter	27.00
	1" Meter	45.00
12	1 1/2" Meter	90.00
	2" Meter	144.00
13	3" Meter	270.00
	4" Meter	450.00
14	6" Meter	900.00

15 Gallonage Charge per 1,000 Gallons
 (0 to 7,000 gallons)

\$2.25

16 In Excess of 7,000 Gallons

2.50

17 Construction and standpipe commodity charge
 (Per 1,000 gallons)

\$3.75

18 SERVICE LINE AND METER INSTALLATION CHARGES:

19 (Refundable pursuant to A.A.C. R14-2-405)

20	5/8" x 3/4" Meter	\$ 365.00
	3/4" Meter	405.00
21	1" Meter	455.00
	1 1/2" Meter	665.00
22	2" Meter	1,080.00
	3" Meter	2,190.00
23	4" Meter - Compound	2,985.00
	6" Meter - Compound	5,780.00

24 ...

25 ...

26 ...

27 ...

28 ...

SERVICE CHARGES:

Establishment	\$25.00
Establishment (After Hours)	\$40.00
Reestablishment (Within 12 Months)	*
Reconnection (Delinquent)	\$50.00
Meter Test (If Correct)	25.00
Meter Re-Read (If Correct)	5.00
Meter Move at Customer Request	**
Deposit (Residential Customer)	***
Deposit Interest (Per Annum)	6.00%
NSF Check	\$15.00
Deferred Payment (Per Month)	1.50%
Late Payment Charge (Per Month)	1.50%
Hook-up fee as per Exhibit B	

- * Number of months off system times the monthly minimum per A.A.C. R14-2-403(D).
- ** Cost to include labor, materials, overhead and applicable taxes. No charge if no labor involved.
- *** Per A.A.C. R14-2-403(B).

WASTEWATER TREATMENT RATES**MONTHLY USAGE CHARGE:**

5/8" x 3/4" Meter	\$ 35.00
3/4" Meter	38.50
1" Meter	49.00
1 1/2" Meter	63.00
2" Meter	101.50
3" Meter	385.00
4" Meter	735.00
6" Meter	1,015.00

EFFLUENT CHARGE:

Per acre foot	\$200.00
Per 1,000 gallons	0.62

Service Line Connection Charge	\$350.00
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SERVICE CHARGES:

Establishment	\$25.00
Establishment (After Hours)	\$40.00
Reestablishment (Within 12 Months)	*
Deposit	**
Deposit Interest (Per Annum)	6.00%
NSF Check	\$15.00
Deferred Payment (Per Month)	1.50%
Late Payment Charge (Per Month)	1.50%
Hook-up fee as per Exhibit C	

- * Number of months off system times the monthly minimum per A.A.C. R14-2-603(D).
- ** Per A.A.C. R14-2-603(B).

IT IS FURTHER ORDERED that the rates and charges authorized herein shall be effective for all service rendered until otherwise ordered by the Arizona Corporation Commission.

IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. dba Johnson Utilities Company shall file a schedule with its tariff for the collection of the proportionate share of any privilege, sales or use tax, in accordance with A.A.C. R14-2-409(D)(5) and A.A.C. R14-2-608(D)(5).

IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. dba Johnson Utilities Company is hereby authorized to sell up to \$1.35 million of its managing memberships, \$967,500 for each associate membership, and issue up to \$772,000 in a combination of short and long-term debt, at an interest rate of not more than 10 percent per annum.

IT IS FURTHER ORDERED that the authority stated above shall be expressly contingent upon Johnson Utilities, L.L.C. dba Johnson Utilities Company using the financing proceeds for the purposes set forth in the Financing Application.

IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. dba Johnson Utilities Company shall be authorized to engage in any transactions and to execute any documents necessary to effectuate the transactions.

IT IS FURTHER ORDERED that the approval of the financing set forth hereinabove does not constitute or imply approval or disapproval by the Commission of any particular expenditure of the proceeds derived thereby for purposes of establishing just and reasonable rates.

IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. dba Johnson Utilities Company shall establish a tariff for non-potable CAP water usage and file it with the Director of the Commission's Utilities Division for approval.

IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. dba Johnson Utilities Company shall notify the Director of the Commission's Utilities Division at least 15 days prior to serving its first customer.

IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. dba Johnson Utilities Company shall maintain its books and records in accordance with the National Association of Regulatory Utility

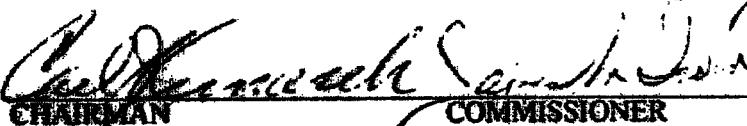
Commissioners Uniform System of Accounts.

IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. dba Johnson Utilities Company shall file a status report for its hook-up fees each January 31 beginning in 1998, accounting for all hook-up fees collected and expended. This status report shall contain a list of all persons that have paid the hook-up fee, the amount each person paid, the amount of money spent from the hook-up fee account, and a list of facilities that have been constructed.

IT IS FURTHER ORDERED that Johnson Utilities, L.L.C. dba Johnson Utilities Company shall file for rate review within 36 months from the date it first provides service to any customer.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.


CHAIRMAN

COMMISSIONER


COMMISSIONER

IN WITNESS WHEREOF, I, GEOFFREY E. GONSHER, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 20th day of May, 1997.


GEOFFREY E. GONSHER
EXECUTIVE SECRETARY

DISSENT
MES:dap

1 SERVICE LIST FOR: JOHNSON UTILITIES, L.L.C. dba JOHNSON UTILITIES COMPANY

2 DOCKET NOS.: U-2987-95-284 and U-2987-95-285

3
4 Richard L. Sellquist
5 SELLQUIST & DRUMMOND, P.L.L.C.
6 2525 East Arizona Billmore Circle, Suite 117
7 Phoenix, Arizona 85016-2129
8 Attorney for Johnson Utilities, L.L.C. dba Johnson Utilities Company

9
10 Randy Finkhouser, Chief Counsel
11 Legal Division
12 ARIZONA CORPORATION COMMISSION
13 1200 West Washington Street
14 Phoenix, Arizona 85007

15
16 Carl Dabulstein, Director
17 Utilities Division
18 ARIZONA CORPORATION COMMISSION
19 1200 West Washington Street
20 Phoenix, Arizona 85007
21
22
23
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25
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27
28

EXHIBIT A

SE 1/4 OF SEC. 18

S 1/2 OF NE 1/4 OF SEC. 18

S 1/2 OF NW 1/4 OF SEC. 18

N 1/2 OF SW 1/4 OF SEC. 18

SE 1/4 OF SW 1/4 OF SEC. 18

E 1/2 OF SEC. 19

ALL PORTIONS OF SEC. 20, 28 AND 29 THAT ARE SOUTH AND WEST OF THE HUNT HIGHWAY ALIGNMENT AS OF JUNE 1, 1995.

E 1/2 OF SEC. 30 AND 31

SEC. 32

ALL PORTIONS OF SEC. 33 SOUTH AND WEST OF THE HUNT HIGHWAY ALIGNMENT AS OF JUNE 12, 1995, EXCEPT THE SE 1/4 OF SE 1/4.

ALL IN T3S, R8E, GSRB&M, PINAL COUNTY, ARIZONA.

THE TWO PARCELS DESCRIBED BELOW:

THAT PART OF THE NORTH HALF OF SECTION TWENTY (20), TOWNSHIP THREE (3) SOUTH, RANGE EIGHT (8) EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA, LYING EAST OF HUNT HIGHWAY.

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, HELIUM OR OTHER SUBSTANCES OF A GASEOUS NATURE, COAL, METALS, MINERALS, FOSSILS, FERTILIZER OF EVERY NAME AND DESCRIPTION AND EXCEPT ALL MATERIALS WHICH MAY BE ESSENTIAL TO PRODUCTION OF FISSIONABLE MATERIALS AS RESERVED IN ARIZONA REVISED STATUTES;

EXCEPT ANY PORTION THEREOF LYING WITHIN HUNT HIGHWAY.

THAT PORTION OF SECTION 21, TOWNSHIP 3 SOUTH, RANGE 8 EAST, GILA AND SALT RIVER MERIDIAN, PINAL COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF SAID SECTION 21;

THENCE, N 03° 06' 14" W, ALONG THE WEST LINE OF SAID NORTHWEST ONE-QUARTER (NW 1/4), A DISTANCE OF 5.00 FEET TO THE POINT OF BEGINNING;

THENCE, CONTINUE N 03° 06' 14" W ALONG SAID WEST LINE, 1,313.25 FEET;

THENCE, S 86° 00' 00" E, 151.16 FEET TO A LINE 150.00 FEET EAST OF AND PARALLEL WITH SAID WEST LINE OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 21;

THENCE, S 03° 06' 14" E, ALONG SAID PARALLEL LINE, A DISTANCE OF 1,294.56 FEET;

THENCE, S 86° 53' 46" W, 150.00 FEET TO THE POINT OF BEGINNING

CONTAINING 4.49 ACRES, MORE OR LESS.

**EXHIBIT B
TARIFF SCHEDULE**

UTILITY: JOHNSON UTILITY COMPANY

SHEET NO. _____

DOCKET NO. U-2987-95-284 et al.

DECISION NO. _____

EFFECTIVE DATE: _____

OFF-SITE FACILITIES HOOK-UP FEE-WATER

Applicable to: In addition to the Meter Installation Charge and requirements for on-site facilities to be installed pursuant to approved main extension agreements, the following Off-site Facilities Hook-up Fee is applicable to all new service connections requiring a main extension agreement.

Purpose: To equitably apportion the costs of off-site water facility development among all new service connections.

Definitions:

"Applicant" means any party entering into an agreement with Company for the installation of water facilities to serve new service connections.

"Company" means Johnson Utility Company.

"Main extension agreement" means any agreement whereby an applicant agrees to advance the costs of the installation of water facilities to Company to serve new service connections, or install water facilities to serve new service connections and transfer ownership of such water facilities to Company, which agreement shall require the approval of the Arizona Corporation Commission. Same as "line extension agreement".

"Off-site facilities" means wells, storage tanks and related appurtenance necessary for proper operation, including engineering and design costs. Off-site facilities may also include booster pumps, pressure tanks, transmission mains and related appurtenances necessary for proper operation if these facilities are not for the exclusive use of applicant.

"Service Connection" means and includes all service connections for single-family residential or other uses, regardless of meter size.

Off-site Facilities Hook-up Fee: Each new service connection shall pay the total Off-site Facilities Hook-up Fee derived from the following table

DECISION NO. 60223

OFF-SITE FACILITIES HOOK-UP FEE TABLE

<u>Meter Size</u>	<u>Total Fee</u>
5/8" & 3/4"	\$ 750.00
3/4"	\$ 900.00
1"	\$ 1,500.00
1-1/2"	\$ 3,000.00
2"	\$ 4,800.00
3"	\$ 9,000.00
4"	\$ 15,000.00
6" or greater	\$30,000.00

Terms and Conditions:

- (A) **Time of payment:** In addition to the amounts to be advanced pursuant to an Arizona Corporation Commission approved main extension agreement, the applicant for new water services shall pay the Company the Off-site Facilities Hook-up Fee as determined by meter size and number of connections to be installed pursuant to the main extension agreement. Payment of the Off-site Facilities Hook-up Fee shall be made at the time of payment of the main extension agreement or prior to commencement of construction of the water facilities to be installed by applicant pursuant to the main extension agreement.
- (B) **Off-site Facilities Hook-up Fee Non-refundable:** The base fee amounts collected by the Company pursuant to the Off-site Facilities Hook-up Fees shall be non-refundable advances in aid of construction.
- (C) **Trust Account:** All funds collected by the Company as Off-site Facilities Hook-up Fees shall be deposited into a separate interest bearing trust account and used solely for the purpose of paying for the costs of off-

site facilities, including repayment of loans obtained for the installation of off-site facilities.

(D) Disposition of Excess Funds: After all necessary and desirable off-site facilities are constructed utilizing funds collected pursuant to the Off-site Facilities Hook-up Fee or the Off-site Facilities Hook-up Fee has been terminated by order of Arizona Corporation Commission, any funds remaining in the trust account shall be refunded. The manner of the refund shall be determined by the Commission at the time a refund becomes necessary.

**EXHIBIT C
TARIFF SCHEDULE**

UTILITY: JOHNSON UTILITY COMPANY

SHEET NO. _____

DOCKET NO. U-2987-95-284 et al.

DECISION NO. _____

EFFECTIVE DATE: _____

OFF-SITE FACILITIES HOOK-UP FEE-WASTEWATER

Applicable to: In addition to any other Arizona Corporation Commission approved charges and requirements for on-site facilities to be installed pursuant to main extension agreements, the following Off-site Facilities Hook-up Fee is applicable to all new service connections requiring a main extension.

Purpose: To equitably apportion the costs of off-site wastewater facility development among all new service connections.

Definitions:

"Applicant" means any party entering into an agreement with Company for the installation of wastewater facilities to serve new service connections.

"Company" means Johnson Utility Company.

"Main extension agreement" means any agreement whereby an applicant agrees to advance the costs of the installation of wastewater facilities to Company to serve new service connections, or install wastewater facilities to serve new service connections and transfer ownership of such wastewater facilities to Company.

"Off-site facilities" means treatment plant, sludge disposal facilities, effluent disposal facilities and related appurtenance necessary for proper operation, including engineering and design costs. Offsite facilities may also include lifts stations, force mains, trunk collection mains and related appurtenances necessary for proper operation if these facilities are not for the exclusive use of applicant.

"Service Connection" means and includes all service connections for single-family residential or other uses, regardless of service lateral size.

DECISION NO. 60223

Off-site Facilities Hook-up Fee: Each new service connection shall pay the total Off-site Facilities Hook-up Fee derived from the following table:

OFF-SITE FACILITIES HOOK-UP FEE TABLE

<u>Service Lateral Size</u>	<u>Total Fee</u>
4"	\$ 1,000.00
6"	\$ 2,000.00
8" or greater	\$ 4,000.00

Terms and Conditions:

- (A) Time of payment: In addition to the amounts to be advanced pursuant to a main extension agreement, the applicant for new wastewater services shall pay the Company the Off-site Facilities Hook-up Fee as determined by service lateral size and number of connections to be installed pursuant to the main extension agreement. Payment of the Off-site Facilities Hook-up Fee shall be made at the time of payment of the main extension agreement or prior to commencement of construction of the wastewater facilities to be installed by applicant ; pursuant to the main extension agreement.
- (B) Off site Facilities Hook-up Fee Non-refundable: The base fee amounts collected by the Company pursuant to the Off-site Facilities Hook-up Fee shall be non-refundable advances in aid of construction.
- (C) Trust Account: All funds collected by the Company as Off-site Facilities Hook-up Fees shall be deposited into a separate interest bearing trust account and used solely for the purpose of paying for the costs of off-site facilities, including repayment of loans obtained for the installation of off-site facilities.
- (D) Disposition of Excess Funds: After all necessary and desirable off-site facilities are constructed utilizing funds collected pursuant to the Off-site Facilities Hook-up Fee or the Off-site Facilities Hook-up Fee has been terminated by order of Arizona Corporation Commission, any funds remaining in the trust account shall be refunded. The manner of the refund shall be determined by the Commission at the time a refund becomes necessary.